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A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-561

In re Applications of

SUSAN LUNDBORG (hereafter Lundborg)	File No. BPH-850712R8
RIO BRAVO, LTD. (hereafter Rio Bravo)	File No. BPH-850712S2
TONY A. CRANFORD (hereafter Cranford)	File No. BPH-850712R6 (DISMISSED)
TEXAS MEDIA GROUP, INC. (hereafter TMG)	File No. BPH-850712R7 (DISMISSED)
SOUTH PADRE FM GROUP (hereafter Group)	File No. BPH-850712R9 (DISMISSED)

For Construction Permit for a New Commercial FM Station in South Padre Island, Texas (Channel 237A, 95.3 MHz)

HEARING DESIGNATION ORDER

Adopted: December 8, 1987; Released: January 6, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications.

2. *Preliminary Matter.* On July 12, 1985, Tony A. Cranford (File No. BPH-850712R6), Texas Media Group, Inc. (File No. BPH-850712R7) and South Padre FM Group (File No. BPH-850712R9) tendered applications for the referenced allotment. Each proposed to operate with an effective radiated power (ERP) of 3 kilowatts and an antenna height above average terrain (HAAT) of 100 meters (328 feet). All three applications were returned on March 24, 1986 as unacceptable for filing for violating Article 5 of the United States-Mexican Agreement of 1972, which restricted Class A stations within 320 kilometers (199 miles) of the U.S.-Mexican border to a maximum HAAT of 91 meters (300 feet). Each applicant petitioned for reconsideration of the return of its respective application. In various phrasings, the petitioners allege:

(1) that the FM Branch had specifically indicated in its April 30, 1985 public seminar on the new processing procedures contained in the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (May 13, 1985), that noncompliance with international treaties affected an application's grantability, not its acceptability. *Cranford Reconsideration*, at paragraph 7;

(2) that the Commission's policy of conversion from feet to meters and rounding off to the nearest "convenient" metric unit did not comply with the working agreement with Mexico. *Cranford Reconsideration*, at paragraphs 2 & 8;

(3) that "there is no indication anywhere in the Commission's Rules that different maximum limits apply to applications for new stations in areas subject to the U.S./Mexican agreement." *Texas Media Group Reconsideration*, in "Summary"; and

(4) that the Commission's refusal to waive its acceptability criteria violated the principle established in *Salzer v. FCC*, 778 F. 2d 869 (D.C. Cir. 1985) that dismissal of applications is arbitrary and capricious when the FCC's instructions for these applications are "incomplete, ambiguous or improperly promulgated." *Group Reconsideration*, at paragraph 8.

3. In the interim between the filing of the noted petitions and the instant proceeding, the Commission has, in *Kerrville Radio, A Limited Partnership (Kerrville)*, 2 FCC Rcd 3441 (1987), denied objections identical to those listed above concerning the Commission's metrication conversion, the rules referencing the U.S.-Mexican Agreement, and the impact of the Court's ruling in *Salzer v. FCC*, 778 F.2d 869 (D.C. Cir. 1985). In brief, the Commission held that: (i) the *Report and Order* in BC Docket 80-90, 48 Fed. Reg. 29486, 29499 (1983), warned applicants within 320 kilometers (199 miles) of the U.S.-Mexican border that Class A facilities must conform to the 300-foot maximum, specifying the metric equivalent; (ii) "there are references to the Mexican and Canadian Agreements in both the rules (47 C.F.R. §§ 73.204 and 73.1650) and in the revision in the *Report and Order* in MM Docket 84-750; and (iii) "full and explicit notice" of the requirement for continued adherence to the terms of the U.S.-Mexican Agreement was provided, where such was not the case concerning the new, strict acceptability standards governing LPTV applications in *Salzer*. *Kerrville*, at 3442. With these matters satisfactorily disposed, it is only necessary to address in this document TMG and Cranford's reliance or comments given April 30, 1985 by a member of the Commission's staff and the petitioners' allegations that reaffirmation of the U.S.-Mexican Agreement was not made public until the period for filing minor amendments as of right had passed.

4. Cranford alleges that dismissal of his application was "unlawful" as "contrary to announced Commission procedures." TMG alleges the dismissal of its application was "a drastic sanction," and that the Commission previously provided standards in the *Report and Order* in BC Docket 80-90, at 29499, that were "completely inconsistent with the standards sought to be applied to [its] application." Since the Commission's December 23, 1985 *Public Notice* (Mimeo No. 1634) reaffirming the 1972 U.S.-Mexican Agreement appeared three months after the last date for filing minor amendments as of right, the petitioners request that grant of their petitions be accompanied by acceptance of a curative pre-designation amendment (TMG) or by incorporating a request for compliance with the Agreement within the designation order (Cranford).

5. We reject both petitioners' allegations and their proposed remedies. Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule. *Satellite Broadcasting Company, Inc. v. FCC*, No. 86-1247, slip op. at 6 (D.C. Cir., July 7, 1987), citing *Gates & Fox Co., Inc. v. OSHRC*, 790 F.2d 154, 156 (D.C. Cir. 1986). The return of the petitioners' applications as unacceptable for filing was based on continuing standards specified in the U.S.-Mexican Agreement of 1972. It is well settled under 44 U.S.C. § 1507 that publication in the *Federal Register* constitutes constructive notice of Commission processing standards. *See M & C Broadcasting, Inc.*, Mimeo 35777 (April 29, 1985), citing *Federal Crop Insurance v. Merrill*, 332 U.S. 380 (1947). Interested parties are therefore charged with knowledge of matters duly and properly published therein. *220 Television, Inc.*, 81 FCC 2d 575, 577 (1980). Despite the petitioners' claims of being penalized for their reliance on comments made by Commission staff person, it has been our long-standing policy "to hold applicants themselves responsible for compliance with our rules and to reject all efforts to shift responsibility to others." *United Public Broadcasting Co., Inc.*, 57 RR 2d 1605,1606 (1985).

6. Moreover, the petitioners' claim that the Commission's December 1985 *Public Notice* constituted the first adequate notice of the 300-foot maximum HAAT for Class A stations within 320 kilometers of the U.S.-Mexican border is clearly in error. The matter had been addressed in the *Federal Register* 22 months *before* the Commission's seminar on the modified processing procedures and again 2 weeks after the seminar. In the former, the Commission stated explicitly:

> Those allotments and assignments which are within 320 kilometers (199 miles) of the Canadian or Mexican border must conform to the requirements specified in the FM Broadcast Agreement existing between the United States and the respective country.

Report and Order in BC Docket 80-90, *supra*. In the second, the Commission warned that international agreements may influence the provisions of 47 C.F.R. § 73.211 governing a station's power and antenna height.

Report and Order in MM Docket 84-750, at 19946. Further, applicants are urged in the Instructions to FCC Form 301 to "have on hand and be familiar with", *inter alia*, Part 73 of the Rules. *Kerrville, supra*. This section includes the provisions in 47 C.F.R. §§ 73.204 and 73.1650 concerning the U.S.-Mexican Agreement. These rules are clearly-defined and consistent: they indicate that international agreements may restrict the use of some channels, which agreements are relevant and where they may be purchased or inspected. *Compare with Satellite Broadcasting Company, Inc. v. FCC, supra* at 3. To accept the petitioners' claim that they were misled by a staff comment made April 30, 1985 would convey to such comment the power to nullify an official notice legally and properly given on June 27, 1983. *220 Television, Inc., supra*. Where the Commission has on its own part neglected to provide applicants within the areas affected by international treaties relevant and essential information, late-filed curative amendments are the appropriate remedy. *LNJ Communications*, MM Docket No. 87-426 (released October 8, 1987). Where applicants had full and timely notice of all pertinent technical and processing requirements, no justification exists warranting grant of either the petitions for reconsideration or the requests for acceptance of late-filed amendments.

7. *Lundborg*. Lundborg proposes to side-mount her transmitting antenna on an existing tower atop the Bahia-Mar Hotel (6300 Park Road) on South Padre Island. The antenna is an unspecified height above the roof of the hotel. Consequently, we are concerned that her proposal may have failed to comply with the newly revised environmental criteria set forth in the *Report and Order* in General Docket No. 79-163, 51 Fed. Reg. 14999 (1986). Under the newly revised rules, applicants must determine whether their proposals would have a significant effect under the criteria set out in 47 C.F.R. § 1.1307. If the applications are subject to environmental processing under the Section 1.1307(b) criteria, the applicants must then submit an Environmental Assessment containing the information delineated in the newly revised 47 C.F.R. § 1.311. Section 1.1307 states that an environmental assessment must be prepared if the proposed operations would cause exposure to workers or the general public to levels of radiofrequency radiation exceding specified standards. Since her pr posal may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, Lundborg will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Lundborg will be required to file within 30 days of the release of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 70 FCC 2d 239 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

8. Lundborg has petitioned for leave to amend her application on February 4 and December 8, 1986 and on October 15, 1987. The accompanying amendments were filed after September 20, 1985, the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from such will be disallowed.

9. *Other matters*. Cranford and TMG petitioned on April 30 and May 1, 1986, respectively, to deny the Lundborg and Rio Bravo applications. Both pleadings were premised on short-spacings between Lundborg's and Rio Bravo's proposed sites and the buffer zone for first-adjacent station KZFM, Corpus Christi, Texas. This premise is in error. Buffer zone protection was limited to existing Class C stations operating below the 300-meter Class C minimum HAAT during the 3-year grace period afforded such facilities to upgrade pursuant to the *Memorandum Opinion and Order* in MM Docket 80-90, 97 FCC 2nd 279, 283 (1984). Lundborg and Rio Bravo were there-

fore required to provide a total of 185 kilometers (the 169 kilometers mandated by 47 C.F.R. § 73.207 plus the 16 kilometers specified in the *Memorandum Opinion and Order)* spacing between their respective proposals and KZFM's licensed (41 kW/98 meters) facilities atop 600 Broadway in Corpus Christi. No such protection was required to protect KZFM's non-operating but permitted facilities (File No. BPH-831205AO) near Petronilla, Texas. Our analysis confirms that both Lundborg's and Rio Bravo's proposed sites exceeded the required 185 kilometer requirement with respect to KZFM's operating facilities. Accordingly, both petitions will be denied.

10. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

11. Except as may be indicated by any issues below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Lundborg in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That the petitions for reconsideration filed by Tony Cranford, Texas Media Group, Inc. and South Padre FM Group ARE DENIED.

14. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Lundborg shall submit the environmental assessment required by Section 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

15. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Lundborg ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

16. IT IS FURTHER ORDERED, That the petitions to deny filed by Tony Cranford and Texas Media Group, Inc. ARE DENIED.

17. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

18. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **January 27, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

19. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-562

In re Applications of

ROBERT J. WOLF/ SHIRLEY P. WOLF (hereafter Wolf)	File No. BPH-860808MC
DEVINE PROVIDENCE BROADCASTING, INC. (hereafter Providence)	File No. BPH-860811MB
KATHERINE T. MCCANN (hereafter McCann)	File No. BPH-860811MC
JERRY YOUNG (hereafter Young)	File No. BPH-860811MH

For a Construction Permit
for a New FM Station on
Channel 230A in Woodstock, Vermont

HEARING DESIGNATION ORDER

Adopted: December 8, 1987; Released: January 6, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Providence*. On December 29, 1986, Kenneth L. Niemczyk, Town Planner and Zoning Officer for the town of Woodstock, filed an informal objection against the Providence application. Specifically, Niemczyk submits that the proposed site is located within particular zoning districts (RD-5 and Steep Slope) that do not allow for the use of land and placement of structures serving a commercial radio station. Accordingly, Niemczyk requests that the Commission deny the Providence application.

3. The Commission consistently has held that it does not require absolute assurance of the availability of a proposed site; rather it requires only that an applicant have "reasonable assurance" that its proposed site will be available *See Edward G. Atsinger, III*, 29 FCC 2nd 443 (1971). Since an applicant is required only to have reasonable assurance of site availability, and not absolute proof, it was not incumbent upon Providence to obtain zoning approval before grant of its construction permit. *Gareth F. Garlund and Anna White Garlund*, 69 FCC 2d 2006 (1978). Finally, the Commission has traditionally been reluctant to consider requests for the denial of applications based upon the predictions of local counsel or individual members of zoning authorities. The predictions of a zoning authority's staff are not probative of zoning approval or denial. *Radio Ridgefield, Inc.* 47 C.F.R. 2nd 106 (1974). Accordingly, for the above mentioned reasons, the informal objection will be denied.

4. *McCann*. A review of McCann's engineering exhibit shows that discrepancies exist between the plotted distance from the proposed transmitter site to the 3.16 mV/m contour and to the 1 mV/m contour, as plotted in Exhibit V-1, and the tabular distances listed in Section V-B, Item 15. However, we find that this discrepancy does not affect city-grade coverage, and therefore conclude it does not affect the acceptability of the application. McCann shall submit an amendment correcting the discrepancy between the contour map and the responses contained in Section V-B, Item 15 within 30 days of the release of this Order.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. The applicant below have petitioned for leave to amend their applications after the last date for filing amendments as of right. These amendments report significant changes in information previously furnished to the Commission and, pursuant to 47 C.F.R. § 1.65, are accepted for filing. However, the applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from these amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Wolf	12-29-86, 6-25-87

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That, the informal objection filed by Niemczyk against the Providence application is HEREBY DENIED.

10. IT IS FURTHER ORDERED, That McCann shall submit an amendment correcting the discrepancy between the contour map and the responses contained in Section V-B Item 15, to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicant ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Wolf.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **January 27, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI INTERNATIONAL, INC. File No. I-T-C-88-021

Application for Authority to Acquire and Operate the Interests of Comsat International Communications, Inc., RCA Global Communications, Inc., and American Telephone and Telegraph Company in the Andover International Earth Station and To Offer Earth Station Services Under Tariff to Authorized Users

COMSAT INTERNATIONAL COMMUNICATIONS, INC. File No. CSG-88-005-AL

AMERICAN TELEPHONE & TELEGRAPH COMPANY

RCA GLOBAL COMMUNICATIONS, INC.

WESTERN UNION INTERNATIONAL, INC.

Application for consent to assignment of radio station construction permit or license

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: December 21, 1987; Released: January 6, 1988

By the Acting Chief, International Facilities Division:

1. MCI International, Inc. (MCII) has filed an application, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214, and Section 201(c)(7) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. Section 721(c)(7), to acquire and operate the interests of Comsat International Communications, Inc. (CICI),[1] American Telephone and Telegraph Company (AT&T) and RCA Global Communications, Inc. (RCA) in the Andover, Maine international earth station, and to offer earth station services under tariff to authorized users. We also have before us the application of CICI, AT&T, RCA and Western Union International, Inc. (WUI)[2] for consent to assign to MCII the radio station construction permits or licenses for the Andover earth station. No opposition or comments were filed. For the reasons stated below we grant the applications.

BACKGROUND

2. In 1965 the Commission adopted an interim policy centralizing in Comsat responsibility to design, construct and operate three initial international earth stations, including the Andover facility.[3] The Commission determined that the interim policy would remain in effect for two years from the date the first earth station was licensed, unless experience indicated the desirability of earlier revision. [4]

3. In December 1966, with the scheduled launch of a second transatlantic service satellite, the Commission found such revision desirable to meet the need for immediate construction of three additional earth stations.[5] It further found fair and sound Comsat's proposal to reduce to 50 percent its interest in the three initial earth stations, including Andover, and to acquire a 50 percent interest in the three additional facilities, and decided that the most logical and equitable formula for allocating the remaining interests would be one reasonably related to use.[6]

4. The Commission subsequently has reallocated ownership interests in Andover and other ESOC earth station facilities to reflect changes in use. The most recent reallocation, in 1984, resulted in the current ownership shares in Andover: CICI, 50 percent, AT&T, 47.5 percent, RCA, 1.4 percent and WUI, 1.1 percent.[7]

APPLICATIONS

5. These applications are a third series of filings presented to the Commission by the carriers with ownership interests in the U.S. Mainland Consortium of ESOC in response to the Commission's *Earth Station Modification Order*.[8] MCII's application states that MCII will acquire the Andover facility on December 31, 1987 for $500,000.[9] MCII further states that it will provide earth station services to authorized users in accordance with tariff charges and regulations filed with the Commission, and will perform accounting in accordance with Part 35 of the Commission's rules. MCII's application attaches a copy of the Agreement of Sale signed by CICI, Comsat, RCA, AT&T, and WUI as sellers and MCI as buyer.

6. In support of its application to acquire and operate the Andover facilities, MCII avers that its proposal satisfies the concerns of the Commission enunciated in the *Earth Station Modification Order*. First, it notes that the proposal was agreed to by all parties with ownership interests in the earth station. Second, it states that the proposal is consistent with a more flexible ownership/operation policy which will increase competition in the provision of earth station services and thus should exert a downward pressure on rates for these services. Third, it concludes that MCII's acquisition of this existing facility will be consistent with the Commission's objective of efficient facility use. Acquisition of a presently operational station, MCII asserts, will moot the concerns of economic harm to ESOC posited in our *Earth Station Modification Order* and any issues of frequency coordination and environmental impact. Fourth, MCII states that its acquisition of an operational facility also will avoid any threat of service disruptions that otherwise might have resulted from the dissolution of the ESOC structure. Fifth,

it advises that it will provide, under tariff, nondiscriminatory and equitable access to authorized users and thereby concludes that its acquisition of the facility will not affect adversely current service users. Sixth, it notes that the proposed change in ownership will not affect adversely COMSAT's role as U.S. Signatory because the Agreement of Sale provides for COMSAT's continued use of the facility as necessary for compliance with its signatory and contractual duties to INTELSAT. Finally, MCII avers that it is technically, financially, and legally qualified to own and operate the earth station. It notes that it has been a participant in the ESOC structure and has been found qualified to construct and operate an international multi-purpose earth station at Yacolt, Washington.[10]

DISCUSSION

7. In its *Earth Station Modification Order*,[11] the Commission established a more open and flexible earth station policy which allows entities other than ESOC to provide international earth station capacity. It concluded that this new policy would best serve the public interest by increasing efficiencies and reducing costs to users via the creation of competitive pressures on rates. It also permitted the ESOC joint owners to negotiate among themselves the future of ESOC. Any arrangement unanimously agreed upon by the joint owners would be submitted to the Commission for review. The instant applications represent the joint owners' third series of filings incorporating their unanimous proposals for the future of ESOC earth stations.[12] After careful consideration of the subject applications and documents filed herein, we find that the proposed arrangements are consistent with the *Earth Station Modification Order* and will serve the public interest, convenience and necessity, for the reasons stated below.

8. In its *Earth Station Modification Order* the Commission concluded that adoption of a more flexible earth station ownership policy was consistent with the Communications Act of 1934 and the Communications Satellite Act of 1962.[13] It found that carrier-owned and operated earth stations are technically feasible, create no major economic hurdles, will not affect greatly U.S. foreign partners in INTELSAT, and will result in lower cost and technically superior service to consumers.[14] These public interest findings, as a threshold matter, clearly apply to the proposed transfer of the ownership interests of CICI, AT&T and RCA in the Andover earth station to a qualified international carrier. Just as clearly, MCII's legal, technical, and financial qualifications to acquire and operate the earth station are well-established. MCII has participated in ESOC and recently was found qualified to construct an international multi-purpose earth station at Yacolt, Washington.[15]

9. *Increased Competition in the Provision of Earth Stations Services.* The *Earth Station Modification Order* concluded that a liberalized earth station ownership policy -- permitting independent earth station ownership outside of ESOC -- would benefit users by increasing carrier and service options and creating competitive pressures on rates.[16] We agree with MCII that a grant of the instant application is consistent with the Commission's policy to increase competition in the provision of earth station services. With the grant of this application and others, *see, e.g.*, US Sprint Communications Company, CSG-87-007-P/L(A), 2 FCC Rcd 4001 (1987), carriers seeking access to East Coast earth stations should have a number of available options. They can take service from AT&T under tariff, they can take service from other earth station providers such as MCII, or they can build their own facilities. Such increased competition will result in lower cost and increased service options for consumers.

10. *Effect on Comsat's Signatory Role.* In its *Earth Station Modification Order* the Commission raised the issue of potential harm to Comsat in its provision to the public of space segment or earth station services should a carrier, most likely AT&T, apply to construct and operate a new multi-purpose earth station with the intention of directing its traffic from an ESOC facility to its new earth station.[17] The Commission anticipated that the ESOC co-owners, should they reach a settlement on the future of ESOC, would make some arrangement to minimize economic injury, thereby mooting the issue.[18] In fact, that is what the instant arrangements do. MCII's purchase of the existing station, as opposed to construction of a new station, moots the revenue diversion issue.[19] Moreover, the Agreement of Sale attached to MCII's application expressly provides for continued use of the earth station by Comsat in its role as U.S. Signatory to INTELSAT.

11. *Quality and Continuity of Service to Users.* The *Earth Station Modification Order* also reiterated the Commission's expectation that any arrangement on the future of ESOC would assure, without disruption, the continuation of efficient, high quality service at reasonable rates.[20] MCII's acquisition of Andover, as opposed to construction of new facilities, mitigates any concern about disruptions to service that might occur when an existing ESOC earth station is retired.[21]

CONCLUSION/ORDERING CLAUSES

12. In conclusion, we find that the proposed arrangements are consistent with the policies set forth in the Commission's *Earth Station Modification Order* and meet the relevant statutory requirements.

13. Accordingly, IT IS CERTIFIED that the public interest, convenience and necessity require that MCII acquire the interests of CICI, AT&T and RCA in the Andover earth station.

14. IT IS FURTHER ORDERED that the application of MCI, International, Inc. File No. I-T-C-88-021, IS GRANTED, and MCII is authorized to acquire and operate the interests of CICI, AT&T and RCA in the Andover international earth station and to offer earth station services under tariff to authorized users.

15. IT IS FURTHER ORDERED that the application of Comsat International Communications, Inc., Western Union International, RCA Global Communications, Inc. and American Telephone and Telegraph Co., File No. CSG-88-005-AL, IS GRANTED, and the applicants are authorized to assign their radio station licenses or permits for the Andover international earth station to MCII.

16. The Commission retains jurisdiction over this matter to ensure that all present and future authorized carriers have nondiscriminatory use of, and equitable access to, the communications satellite system and earth stations.

17. This order is issued under Section 0.291 of the Commission's Rules and Regulations, 47 C.F.R. Section 0.291 (1985), and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for

review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] On July 14, 1987, CICI applied for Commission consent to assign CICI's interests to Comsat Earth Stations, Inc., which, like CICI, is a wholly-owned subsidiary of Comsat. Comsat International Communications, Inc. and Comsat Earth Stations, Inc., ENF-87-20 (filed July 14, 1987). The sole purpose of Comsat Earth Stations, Inc. is to operate the ESOC multi-purpose earth stations until they are transferred to other U.S. international service carriers in 1987. *Id.* at p. 4. We granted CICI's application in an order released November 16, 1987. Communications Satellite Corporation, DA 87-1659 (released November 16, 1987).

[2] WUI is a wholly-owned subsidiary of MCII. Thus, although WUI has filed an application for consent to assign its license to MCII, MCII, as WUI's parent, has not sought authority to acquire and operate WUI's interest.

[3] Report and Order, 38 F.C.C. 1104 (1965). We authorized Comsat to operate the facility commercially in Communications Satellite Corp., 1-CSG-L-65, 38 F.C.C. 1298 (1965).

[4] 38 F.C.C. at 1117.

[5] Second Report and Order, 5 F.C.C. 2d 812, 814 (1966). The Commission determined that extension of the initial policy, centralizing in Comsat responsibility for the design, construction and operation of the initial earth stations, to the additional earth stations was not appropriate because it would preclude other authorized carriers from any participation in earth station ownership during the early years of operation, contrary to the intent of Congress. However, because the Commission still was concerned about fragmenting responsibility for, and control of, what at that stage of development of the art must remain a unified system, it concluded that it should adopt a policy pursuant to which Comsat and the carriers then using earth stations to provide service jointly would be authorized to plan, construct and/or operate the three initial stations and the three proposed additional stations. 5 F.C.C. 2d at 815-16.

[6] 5 F.C.C. 2d at 819. The joint owners of the facilities entered into an Earth Station Ownership Agreement dated March 23, 1967. The agreement established the Earth Station Ownership Committee (ESOC), and provides for the ownership and operation of earth stations in several consortia, including the consortium for earth stations located in the U.S. Mainland, the Mainland Consortium. *See* 8 F.C.C. 2d 406 (1967). The Mainland Consortium at one time included six earth stations: Etam, Jamesburg and Roaring Creek, recently transferred to AT&T, American Telephone and Telegraph Co., ITC-87-109, 2 FCC Rcd 6635 (1987); Brewster Flat, Washington, the retirement of which we earlier authorized in Comsat International Communications, Inc., ITC-87-002, 2 FCC Rcd 1167 (1987); Lennox, which will continue to be operated by ESOC until written off or transferred to a third party; and Andover, at issue in this proceeding. In addition to the U.S. Mainland Consortium, there is an Hawaii Consortium, in which Comsat, RCA, WUI, ITT and Hawaiian Telephone participate; a Guam Consortium, in which Comsat, RCA and WUI are members; and a Puerto Rico/Virgin Islands Consortium, which currently has no international earth stations.

[7] Earth Station Modification Order, 100 F.C.C. 2d 250, 288 (1984). This decision adopted a more liberal earth station ownership policy to replace the policy the Commission had designed eighteen years earlier to ensure the successful establishment of a global satellite system. The decision recognized that the dynamic nature of satellite and earth station technologies had fostered new services and the development of more efficient satellites and smaller earth stations. It also noted that both INTELSAT's membership base and financial stability had grown significantly since 1966. Thus, it concluded that carriers should have the opportunity to own earth stations outside of ESOC.

[8] 100 F.C.C. 2d 250 (1984) (adopting more flexible policy permitting carriers to own earth stations independent of ESOC). The first series of applications involved the retirement of the Brewster Flat earth *See* Comsat International Communications, Inc., I-T-C-87-002, 2 FCC Rcd 1167 (1987) (granting application to retire Brewster Flat, Washington earth station). The second series of applications involved AT&T's acquisition of the interests of CICI, MCII and RCA in the Etam, Jamesburg, and Roaring Creek earth stations. *See* American Telephone and Telegraph Company, I-T-C-87-109, 2 FCC Rcd 6635 (1987) *application for review filed* (November 30, 1987).

[9] The $500,000 acquisition price is the facility's net book cost. Agreement of Sale at para. 2. The $500,000 will be divided among the sellers as follows: CICI, $252,780, AT&T, $240,141, RCA, $7078. WUI, a subsidiary of MCII, will not share in the proceeds. MCI Application at 4 n. 7. *See also* Agreement of Sale at para. 11, providing that the sellers shall share amounts receivable as follows: CICI, 50.5561 percent, AT&T, 48.0283 percent and RCA, 1.4156 percent.

[10] *See* MCI International, Inc., CSG-87-054-P/L, 2 FCC Rcd 5308 (1987).

[11] 100 F.C.C. 2d 250 (1984).

[12] *See supra* n. 8.

[13] 100 F.C.C. 2d at 286.

[14] *Id.*

[15] *See supra* n. 10.

[16] 100 F.C.C. 2d at 265.

[17] 100 F.C.C. 2d at 271-72.

[18] *Id.* at 272.

[19] MCII's proposal to acquire an existing earth station, as opposed to constructing new facilities, also moots concerns about frequency coordination and environmental impacts.

[20] 100 F.C.C. 2d at 259 n. 27.

[21] Even where an earth station is retired, there need not be disruption to service. *See* Comsat International Communications, Inc., I-T-C-87-002, 2 FCC Rcd 1167 (1987) (retirement of Brewster Flat earth station will result in no disruption to service).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-393

In re Applications of

JAMES AND SHARON DEON SEPULVEDA — File No. BPCT-850814KF

CHARLES M. LOHR — File No. BPCT-850816KF

For Construction Permit For New
Television Station
Eureka, California

Appearances

Richard Hildreth, Vincent J. Curtis, Jr., and *Robert A. DePont*, on behalf of James and Sharon Deon Sepulveda.

DECISION

Adopted: December 21, 1987; Released: January 6, 1988

By the Review Board: MARINO (CHAIRMAN), BLUMENTHAL and ESBENSEN.

Board Member ESBENSEN:

1. This proceeding involves the mutually exclusive applications of James and Sharon Deon Sepulveda and Charles M. Lohr for authority to construct and operate a new television broadcast station on Channel 29 in Eureka, California. The only issue to be determined is the standard comparative issue. [1] By *Initial Decision*, FCC 87D-18, released May 19, 1987, Administrative Law Judge Joseph Chachkin granted the Sepulveda application. In so doing, he credited both applicants with 100% quantitative integration and found that they were qualitatively equal in all areas except for that of female and minority enhancement, under which factor Sepulveda received a dispositive preference. This proceeding is now before the Review Board on limited exceptions filed by Sepulveda, which contends that the ALJ erred in failing to accord it a preference for superior past broadcast experience. We have reviewed the I.D. and the underlying record and agree with Sepulveda that it is entitled to an independent preference for broadcast experience which is sufficient to warrant a grant to it in this proceeding. Accordingly, as modified herein, the findings and conclusions of the I.D. are adopted and the ALJ's award of a construction permit to Sepulveda is affirmed. [2]

2. The Sepulveda application is a general partnership consisting of James and Sharon Deon Sepulveda each of whom has an equal ownership share. I.D., Fndgs., para. 4. Mrs. Sepulveda has spent 22 years in the broadcast industry. She began as a bookkeeper in 1964, with KLOC, licensee of a radio station in Ceres, California and a television station in Modesto, California, was promoted to traffic manager there in 1966, in which capacity she worked in all aspects of on-the-air programming for both radio and television stations, and in 1978, she was promoted again to office manager. In 1984, she was promoted to her present position of general manager wherein she supervises a staff of 30 and is responsible for the administration, programming, sales, operations, and promotional activities of the station. I.D., Fndgs., paras. 8-9. Mr. Sepulveda has from 1980 to the present been a member of the board of directors of Christian Foundation, Inc., where his duties include the production and hosting of a Christian television program five days a week on KCSO(TV), Modesto, California. I.D., Fndgs., para. 13. Charles M. Lohr is prosecuting his application as an individual. I.D., Fndgs., para. 14. Mr. Lohr worked from April 1981 until November 1982 as a representative of a broadcast consulting firm in California. From November 1982 through June 1985 he was general manager of KOHA-TV, Hilo, Hawaii, where he managed the engineering, production, EEO, traffic, sales, news, and programming departments, and supervised a staff of 12 employees. Since 1985, Mr. Lohr has been station manager of KSCI-TV, San Bernardino, California, where he manages traffic, production, and engineering and co-manages sales and programming, and supervises 90 employees. I.D., Fndgs., para. 17.

3. The ALJ awarded both applicants 100% credit for past broadcast experience. He noted that although Mrs. Sepulveda's experience has been of greater duration than that of Mr. Lohr, her experience has been largely at the non-managerial level whereas Mr. Lohr's management experience was more extensive. The ALJ concluded that the applicants were comparatively equal under the broadcast experience factor. I.D., Concls., para. 23. In its exceptions, Sepulveda contends that Mrs. Sepulveda's broadcast experience is more diverse and lengthy than credited by the ALJ and that Mr. Lohr's advantage in management experience is too slight to be of any significance. It cites *Jarad Broadcasting Co., Inc.*, 1 FCC Rcd 181 (Rev. Bd. 1986) for the proposition that Mrs. Sepulveda's overall experience is qualitatively superior.

4. We fully agree with Sepulveda that its principals' long-time broadcast experience is demonstrably superior to that of Lohr, and entitles Sepulveda to a comparative preference. In so holding, we of course acknowledge the principle set forth in the Commission's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396 (1965), that previous broadcast experience is generally "deemed of minor significance" in the *Policy Statement's* general hierarchy. That is to say, as a comparative factor *vis-a-vis* other elements such as media diversification and enhancements such as local residence, such experience is viewed as less significant. *Id.* In other words, while broadcast experience may not carry great weight on an "absolute" basis, nothing in the *Policy Statement* suggests that this factor may not be significant on a relative basis as between contending applicants. We adhere in this regard to the venerable administrative maxim that, in the comparative process, the Commission must make subtle judgments where necessary and evaluate all distinctions between the parties that are not frivolous or wholly unsubstantial. *Johnston Broadcasting Co.*, v. *FCC*, 175 F.2d 351 (D.C. Cir. 1949); *Alexander S. Klein, Jr.*, 86 FCC 2d 423, 430 (1981).

5. Both applicants before us do have broadcast experience, and were properly awarded credit therefor by the ALJ. Nevertheless, in deciding that neither applicant was entitled to a preference, the ALJ essentially equated Sharon Sepulveda's 22 year history of broadcast employment with Charles Lohr's 4 year record, on the premise that the latter was management-oriented and therefore weightier. We have never held, however, that past broadcast experience is only creditable where it occurs at the managerial level. *See, e.g., Jarad, supra,* at 187-88 (credit awarded one applicant for experience as general sales manager and account executive in sales and to winning applicant for long-term experience predominantly as announcer); *Radio Jonesboro, Inc.,* 96 FCC 2d 1106, 1110-11, (Rev. Bd. 1984)(credit awarded for experience involving ownership and management functions as well as purely employee duties as staff announcer), *rev. denied,* FCC 85-74, released April 5, 1985; *New Continental Broadcasting Co.,* 88 FCC 2d 830, 849-850 (Rev. Bd. 1981)(subsequent history omitted)(credit given for producing and hosting radio and television shows). Indeed, we stated flatly in *New Continental, supra,* "[n]or does the *Policy Statement* require that [the principal's] broadcast experience be management-related or similar to her proposed new duties in order to be credited." By narrowing the scope of his comparison, the ALJ in effect discounted Mrs. Sepulveda's additional 20 years of non-management broadcast background. For 12 of those years, in the important role of traffic manager at KLOC, Mrs. Sepulveda was involved in all aspects of on-air programming for both radio and television. It would be a serious departure from precedent and common sense not to recognize such hands-on involvement as relevant past broadcast experience, particularly in an era in which the enormous growth of competition in the radio sphere allows scarce opportunity for error. In selecting a party for nearly any position, relative experience is always a key factor and may - under the *Policy Statement* - be considered here on a comparative basis.

6. Thus, we restore full credit for the 22 year history of managerial and non-managerial broadcast station involvement proffered by Mrs. Sepulveda and credit, as the ALJ did, Mr. Sepulveda's experience since 1980 as a producer and host of a TV program. By contrast, Mr. Lohr's considerably shorter broadcast record, albeit in important managerial positions, must be viewed as less weighty and entitling him to lesser credit. Although we would not characterize Sepulveda's overall experience preference as more than moderate, it is sufficient to warrant a decisional comparative preference. A grant of Sepulveda's application will serve the public interest, convenience, and necessity.

7. ACCORDINGLY, IT IS ORDERED, That the application of James and Sharon Deon Sepulveda (File No. BPCT-850814KF) for a construction permit for a new television station in Eureka, California IS GRANTED and the application of Charles M. Lohr (File No. BPCT-850816KF) IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] *See Hearing Designation Order,* MM 1649, released January 2, 1986.

[2] Lohr has not filed exceptions to the I.D. and his application will therefore be dismissed for failure to prosecute. *See* 47 CFR 1.276(f); *Moore Broadcast Industries, Inc.,* 2 FCC Rcd 6253 (Rev. Bd. 1987). Predicated on the belief that the I.D. had unconditionally granted Sepulveda's application and the fact that Lohr did not file exceptions, the Board previously dismissed Sepulveda's exceptions as moot. *Order,* 2 FCC Rcd 4580 (Rev. Bd. 1987). Its exceptions were reinstated, however, by *Order,* 2 FCC Rcd 5577 (Rev. Bd. 1987), after Sepulveda clarified in a petition for reconsideration that pursuant to the Commission's directive in *Reexamination of Racial, Ethnic, or Gender Classifications,* 2 FCC Rcd 2377 (1987), the ALJ made its grant conditional because it was based solely on minority and female integration preferences; hence, the effective date of the I.D. was stayed pending final resolution of MM Docket 86-846. Our award of a dispositive preference to Sepulveda for broadcast experience will permit the grant to become final.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Complaint of

NATIONAL ASSOCIATION FOR
BETTER BROADCASTING

against

TELEVISION STATION KCOP
Los Angeles, California

ORDER GRANTING JOINT MOTION FOR EXTENSION OF TIME

Adopted: December 23, 1987; Released: January 6, 1988

By the Chief, Mass Media Bureau:

1. On November 24, 1987, the Mass Media Bureau released an Order, DA 87-1693, requesting comments on the proper impact of the court's decision in *National Association for Better Broadcasting* v. FCC, Case No. 85-1318, in this proceeding. The comments were due on December 24, 1987.

2. On December 22, 1987, the parties to this proceeding, KCOP Television, Inc. (KCOP) and the National Association for Better Broadcasting (NABB) filed a joint motion for extension of time. The parties requested that the filing deadline for comments be extended 30 days until January 25, 1988.

3. In light of the difficult legal issues involved in this proceeding, the importance of the parties' assistance in interpreting the court's decision, and the fact that both parties have consented to the motion, we believe it would be in the public interest to extend the filing date for comments as requested.

4. Accordingly, IT IS ORDERED that the date for filing comments in this proceeding IS EXTENDED to January 25, 1988. This action is taken pursuant to authority in Section 4(i) of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Steve Bailey, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Roderick K. Porter
Acting Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 6, 1988

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON AT&T COMPARABLY EFFICIENT INTERCONNECTION PLAN FOR CODEC CONVERSION SERVICE

On December 21, 1987, the American Telephone and Telegraph Company (AT&T) filed a Comparably Efficient Interconnection (CEI) plan for a Codec Conversion Service (CCS). CCS is designed to permit customers to use AT&T's ACCUNET Reserved 1.5 Service for video teleconferencing applications by allowing incompatible pieces of picture processing equipment, or "codecs," to communicate. CCS would perform an enhanced protocol conversion from the protocol of the originating codec to that of the terminating codec. AT&T states that protocol conversion is the only enhanced function that CCS will perform, and it will be provided on an integrated basis using AT&T central office equipment that is also used to provide AT&T basic service. AT&T states that US Sprint currently offers a similar integrated enhanced service called Channel Message Service that, like CCS, performs protocol processing. As required in the Computer III proceeding (Phase I Order, 104 FCC 2d 958 (1986), *recon.*, 2 FCC Rcd 3035 (1987), *further recon. pending)* AT&T is submitting a CEI plan that the Commission must approve before AT&T may begin implementing it.

According to AT&T, the tariffed basic service that underlies CCS is AT&T's ACCUNET Reserved 1.5 Service. AT&T states that to fulfill its CEI obligations, its CCS operations will take the ACCUNET Reserved 1.5 Service at standard tariffed rates.

AT&T states it will account for the joint and common costs of CCS pursuant to the Part 32 cost allocation manual that it filed on November 12, 1987, in response to the Commission's Joint Cost Order (2 FCC Rcd 1298 (1987), *recon.*, 2 FCC Rcd 6283 (1987)). AT&T also describes its plans for complying with the other Computer III nonstructural safeguards governing the use of customer proprietary network information, nondiscrimination reporting and nondiscriminatory provisioning, and disclosure of network information.

Interested parties should file comments on this plan by **February 12,1988,** and reply comments by **March 4, 1988,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. Copies of AT&T's CEI plan can be obtained from ITS, (202) 857-3800.

For further information, contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-579

In the Matter of

Waiver of Access Billing
Requirements and Investigation
of Permanent Modifications

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 1987; Released: December 22, 1987

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. The subject of meet point billing has been before the Commission on various occasions since 1983, when the first access tariff filings contained two optional provisions regarding the billing of access services provided by more than one carrier. The first, single company billing, essentially required interexchance carriers (ICs) to order service from the local exchange carrier (LEC) in whose territory the end user serving office associated with the IC's point of presence (POP) was located. That carrier would then determine the charges, arrange to provide the service, perform the billing from its own tariff for the complete service provided, and settle accounts with the other LEC(s) involved in providing that service. The other option, meet point billing, required the LECs involved to divide ordering, rating and billing services on a proportional basis, so that each carrier billed under its respective tariff.

2. In CC Docket No. 83-1145, the Commission required carriers to delete the first option, because its effect would be to charge rates based on the tariff of an exchange carrier other than the one providing service to the customer.[1] This requirement has been waived in three successive orders,[2] because it appeared that the technical and administrative difficulties of implementing meet point billing outweighed any harm that might be caused by use of the first option for a limited period, until those difficulties could be resolved.

3. In January 1986 several carriers filed a joint petition requesting an indefinite extension of this Bureau's waiver.[3] This Bureau released its *March 28 Order* finding that serious meet point billing implementation problems remained, especially with respect to small carriers. The *March 28 Order* deferred the required implementation of meet point billing for Feature Groups C and D (FGC and FGD), special access services, and interstate directory assistance service until January 1, 1988. That Order also adopted an industry proposal that an *ad hoc* group be established to study alternative access billing arrangements and to submit a report of the group's investigation and findings to the Commission. In December 1986, the Meet Point Billing Task Force of the Exchange Carriers Standards Association, Inc. (ECSA) filed a Report (ECSA Report) adopted by ECSA's Ordering and Billing Forum (OBF). The ECSA Report contained proposals for implementing meet point billing.[4] Comments and reply comments were filed in response to that report.

4. The Commission released an Order in this Docket on July 31, 1987, determining that tariff provisions embodying the meet point billing requirements should become effective January 1, 1988.[5] In the instant Order, we find that the tariff provisions relating to meet point billing filed with the annual access tariff filings in October should become effective as scheduled, on an interim basis with an expiration date, pending our further investigation of certain meet point issues. In this Order we initially discuss and clarify some of these issues. We also require that LECs make certain modifications to be effective January 1, 1988. These modifications are required on an interim basis, pending completion of our subsequent investigation.

5. The *July 1987 Order* accepted the ECSA Report and its recommendations, and determined that the general waiver of meet point billing requirements for FGC and FGD, Special Access, and the local transport component of Interstate Directory Assistance services would expire on January 1, 1988. The Order therefore required exchange carriers to file tariff revisions implementing meet point billing, to be effective January 1, 1988.[6] The *July 1987 Order* further stated, however, that any carrier which determined it might not be able to comply with the requirements of the Order by January 1, 1988, was entitled to file a petition for a waiver of those requirements pursuant to the Commission's Rules. *July 1987 Order*, 2 FCC Rcd at 4524 n. 7. Any petitioning carrier would be held to a standard of "substantial justification" for a waiver. *Id.* Filing requirements and guidelines for such petitions were set forth in a public notice released September 16, 1987.[7] Bell Atlantic and Southwestern Bell submitted waiver petitions that were subsequently withdrawn. No other waiver petitions have been filed and all LECs have filed 1988 annual access tariffs that purport to comply with current Commission requirements. In petitions filed against 1988 annual access tariffs, American Telephone and Telegraph Company (AT&T) and MCI Communications Inc. (MCI)[8] have charged that several filing carriers failed to meet the requirements set forth in the *July 1987 Order*.

II. PLEADINGS [9]

A. Petitions

6. MCI argues that the LECs generally have not stated specifically under what conditions the different billing arrangements will apply. MCI Petition at 65-66. MCI also argues that all the LECs have failed to specify which meet point billing arrangement will be used for each service for each state represented in their tariffs. *Id.* at 69-70.[10] MCI states that this failure violates Section 61.54(j) of the Commission's Rules, 47 C.F.R. § 61.54(j), which requires specificity. MCI charges that Centel's and Contel's tariff filings demonstrate a "major misunderstanding" regarding the meet point billing requirements generally, and that Contel's plans are extremely ambiguous.

7. MCI says certain carriers intend to inform the access customer of the billing method to be used only when the customer orders access service. MCI argues that such a procedure does not provide the customer with adequate notice. *Id.* at 66. MCI also objects specifically to the

failure of the Ameritech and United Telephone System (United) tariffs to provide that the LEC will state, prior to the ordering of service, which telephone company will be the billing company. MCI states that Ameritech should be required to refile its tariffs, as its provisions regarding meet point billing are unnecessarily cryptic.

8. MCI also charges that New York Telephone (NYT), New England Telephone (NET; together, NYNEX) and Southern New England Telephone (SNET) have failed to make the required showing to justify their use of default multiple billing. MCI points to the statement in the *July 1987 Order* that multiple billing should be used only as a last resort, and that its use imposes an obligation to explain why the single bill option is not feasible. *Id.* at 67-68 (citing *July 1987 Order*, 2 FCC Rcd at 4521). MCI also charges that most of the carriers proposing default (multiple) billing have failed to offer the information necessary to allow for verification of their billing methodologies. *Id.* at 63-65.[11] MCI claims that NYNEX and SNET tariffs should include the explanations given in their supporting materials regarding the steps to be taken in order to conform with the ECSA Report. Finally, MCI proposes a model tariff provision. It suggests that all tariff filings be compared and conformed with the MCI model. *Id.* at 74.

9. AT&T states that many of the LECs' tariff provisions regarding meet point billing raise substantial questions and should be suspended and investigated. AT&T Petition, App. H. AT&T charges also that many of the LECs fail to reference the meet point billing standards established by the industry, set forth in the ECSA Report, and accepted by the Commission in its *July 1987 Order*.[12] Specifically, AT&T objects to BellSouth's proposal to require a customer to place a separate access service request (ASR) with each LEC involved in providing a meet point billed access facility. AT&T states that this departs from the standard method. AT&T says the access customer customarily places its order with one LEC, and that LEC then arranges the joint provision. AT&T states that the LECs, not the customers, design and engineer these access facility arrangements, and that in many cases the customer does not know, and cannot easily ascertain, what LECs are involved.

10. AT&T also maintains that many LECs have filed tariff provisions which impose local transport termination (LTT) and channel mileage fixed (CMF) charges even when the LEC does not terminate the meet point billed facility. *Id.*[13] AT&T notes that since only the LECs at each end of the access facility actually terminate it, it is unreasonable for intermediate LECs to impose LTT and CMF charges. Similarly, AT&T alleges, many LECs have imposed full LTT and CMF charges for jointly-provided services.[14] AT&T states that these charges are designed to recover costs by the carrier terminating both ends of an access facility. If a LEC imposes these charges when it is responsible for terminating only one end, the result is an unfair windfall to the LEC and a double charge to the customer. Finally, AT&T argues that there is a lack of consistency in LECs' apportionment of these charges. AT&T observes that some share 50-50 in every case, and some allocate the charge proportionately, which can result in the customer's being charged more than 100 percent of the LTT and CMF charges.

11. AT&T challenges many of the tariff filings for failure to provide the ECSA Report-mandated 30 day notice for changes in billing arrangements.[15] AT&T argues that this notice is essential to customers, and is required by the ECSA Report. *Id.*

12. Finally, AT&T charges that Cincinnati, Pacific Bell and Fidelity have failed to use billing percentages contained in Exchange Carrier Association (ECA) Tariff F.C.C. No. 4, as required by the ECSA Report, and that NECA and Bay Springs have provided for meet point billed access charges to be computed using interconnection points rather than billing percentages. AT&T states that the use of interconnection points can artificially inflate access charges because of the rounding "up" of mileage. *Id.*

B. Replies

13. Most of the carriers whose tariff proposals are challenged by AT&T and MCI reply to these petitions, as does MCI.[16] The challenged carriers dispute AT&T's argument that the tariff provisions should include a reference to industry standards. These carriers further deny MCI's assertions that the filings are generally too vague, include too little information, will not allow for ready verification, and should follow the MCI model. The challenged carriers defend their filings as adequate within the guidelines established by the Commission in its Rules and the *July 1987 Order*, and state that inclusion of a reference to industry standards would be inappropriate. Several carriers state that inclusion of such a reference would violate Commission Rules and policy.[17] Many carriers state, however, that they intend to use the guidelines established in the ECSA Report. *See , e.g.*, GTOC Reply at 42; United Reply at 18; Nevada Bell Reply at 25; SNET Reply at 34. Some carriers, while arguing that the inclusion of a reference to industry standards is unnecessary, express willingness to add it to their tariffs if the Commission so orders. Lincoln Reply at 6; Cincinnati Bell Reply at 17; GVNW Reply at 2; Nevada Bell Reply at 28. Pacific Bell states that it will modify its tariff language to approximate language in Centel's tariff, which AT&T cited with approval. Pacific Bell Reply at 45.

14. SNET notes that the *July 1987 Order* defers to OBF standards and does not require that these standards be included in the tariff. *Id.* (citing *July 1987 Order*, 2 FCC Rcd at 4523). SNET is joined in this argument by other carriers. *See , e.g.*, Nevada Bell Reply at 25; BellSouth Reply at 83. Nevada Bell argues further that it would be impracticable, costly, and burdensome to require the inclusion of such specifics in the tariff, since this would require a 45-day delay for a tariff revision for any modification. Nevada Bell Reply at 26-27. Rochester denies that AT&T's assertions could apply to its filing, as its tariff states that separate bills are rendered, and describes its precise methodologies. Rochester Reply at 24.

15. Chillicothe also argues that AT&T's objection does not apply to it, as the objection relates to multiple billing only, and Chillicothe uses single billing. Chillicothe Reply at 3. Further, Chillicothe states, the industry standards set forth in the ECSA Report are to be taken as a recommendation only. *Id.* BellSouth and others argue that inclusion in the tariff of the industry standards set forth in the ECSA Report would decrease the carriers' flexibility and would serve to encumber or halt the negotiating process. BellSouth Reply at 84-85; Elkhart Reply at 3-7; Bay Springs Reply at 6-8. NYNEX argues that the specif-

ics of compliance with these standards are better provided directly, LEC to customer, than in the tariff. NYNEX Reply at 126-127.

16. The LECs also respond to MCI's charges that they have failed to state which billing option will be used in each instance, and the circumstances under which the LECs will select one option rather than another. The LECs argue generally that describing which meet point billing option is to be used in each meet point billing arrangement would be burdensome and impracticable. They argue that LECs and their customers would experience excessive delay, since any change would require a tariff revision on 45 days' notice. According to the LECs, the notice they propose to give the customer provides adequate information without the need for such a list; moreover, they assert, the Commission does not require that they provide such a detailed listing. GTOC Reply at 39; BellSouth Reply at 80-82; NECA Reply at 29; Southwestern Bell Reply at 64-65; US West Reply at 45-46; Bell Atlantic Reply at App. A, Item 35.

17. Centel states that it is converting to single billing as rapidly as possible, and that each conversion will be effected upon 30 days' notice to the customer. Centel Reply at 8. Nevada Bell and Pacific Bell state that they cannot provide such a list, as their negotiations are ongoing and their billing option selections are not yet finalized. Nevada Bell Reply at 28; Pacific Bell Reply at 47-48. Ameritech states that it has declared in its tariff that the single bill/single tariff option is in effect unless otherwise noted, and it has then listed any arrangements using a different single bill option or the default multiple bill option. Ameritech Reply, App. C at 13.

18. Several LECs reply to AT&T's objection to tariffs that propose that a customer place its order with each LEC involved in a shared service provision arrangement. AT&T states that industry practice allows the customer to deal with only one LEC, and allows that LEC to effect the service arrangement with other LECs. Contel replies that its tariff has included a provision requiring a customer to place an order with each LEC since October 1985, that no one has heretofore objected, and that it sees no reason to change this provision now. Contel Reply at 51. BellSouth states that AT&T's assertion that the customer may not know which LECs are providing a given part of the service misses the point, and that the customer need only note what LECs are involved in the joint provision. BellSouth Reply at 86-87. In support of the provision, NECA states that AT&T's objection is outside the scope of the present proceeding. NECA Reply at 30.

19. Responding to MCI's challenge that the carriers resorting to the default billing option have failed to justify their selection, Rochester argues that MCI's broad arguments constitute an untimely petition for reconsideration of the Commission's *July 1987 Order*. Rochester Reply at 19-21 (citing *July 1987 Order*, 2 FCC Rcd at 4521). Several carriers state that MCI's charge does not apply to them, as they have justified and explained their use of multiple billing. Centel Reply at 8; SNET Reply at 32; NYNEX Reply at 125-26. Several reply comments discuss the appropriate interpretation of justification of the choice of multiple billing. MCI stresses the discussion at paragraph 23 of the *July 1987 Order*,[18] of the multiple bill option as a "last resort." The responding carriers, on the other hand, focus on the discussion at paragraph 22 of the same Order,[19] which stresses the need for "flexibility," especially for smaller LECs and those already employing the multiple billing option. Rochester Reply at 19-23; SNET Reply at 35-36.

20. The issue of verifiability, raised by MCI in its petition, is addressed by several carriers. MCI notes that the *July 1987 Order* stated that "the default [multiple billing] plan should be used only as a last resort because of the verification problems multiple billing presents for ICs." MCI Petition at 63 (quoting *July 1987 Order*, 2 FCC Rcd at 4521). MCI states that the tariff proposals now before the Commission demonstrate the shortcomings of this option, and that verification is difficult, if not impossible, under most of them. *Id.* at 63; *see also* para. 8, *supra*. In response, Contel argues that it is obligated, under Section 2.4(B)(2) of its tariff, to provide information sufficient to allow for verification. Contel Reply at 46; *see also* BellSouth Reply at 84-85. SNET states that it is aware of the need for, and problems with, verification, and that it provides detailed cross-references to that end. SNET Reply at 33-34.

21. US West states that it intends to provide adequate information, within the guidelines of the *July 1987 Order* and of the MECAB document, and that it is willing to add a statement in its tariff that multiple meet point bills will include the data elements necessary for bill verification. US West Reply at 41-42. Southwestern Bell argues that there are no explicit requirements regarding bill verification information, and that it considers the guidelines developed in the MECAB document as mere non-binding recommendations. Southwestern Bell Reply at 63-64. It further characterizes these matters as administrative, and says that they do not belong in the tariff. *Id.* NECA argues that tariff section 2.4.8(A)(1) applies only when all carriers in an arrangement are NECA pool members, so there is no need to establish meet points or include company-specific charges on the bill. NECA Reply at 27.[20]

22. Each carrier named by AT&T denies its assertions regarding the imposition of unfair and excessive charges for LTT and CMF.[21] Virtually all responding carriers dispute AT&T's claim that intermediate carriers are including charges for termination. Several of the challenged carriers state that they never serve as an intermediate carrier. Others note that the absence of termination charges when they are in the intermediate position is clearly stated in their tariffs. The challenged carriers also claim their tariffs clearly state that they do not charge a full, two-end termination rate when they are providing only one end's termination. These carriers also dispute AT&T's statement that inconsistencies in the method of calculating the sharing of these charges can result in the customers being overcharged. The carriers state that they either stipulate an "appropriate" termination charge (or a termination charge for terminations within their own service territory), or calculate these charges on an averaged per-end basis, meaning that no one charge can be analyzed as AT&T seeks to do. *See , e.g.*, Ameritech Reply, App. C at 14; GTOC Reply at 41-42; United Reply at 19; Lincoln Reply at 5-6; Centel Reply at 5-6; *see also* Cincinnati Reply at 20 (offering to use the 50-50 split requested by AT&T if the Commission so orders).

23. Carriers respond to AT&T's and MCI's objections of inadequate notice and AT&T's assertion that 30 days' written notice is required, by expressing their intent to give adequate notice (*i.e.*, 30 days' written notice). Some are unwilling to include this as a requirement in their tariff filings, however, while others note a willingness to

include this provision in their tariffs should the Commission so order. Lincoln Reply at 6; BellSouth Reply at 79-80; GVNW Reply at 3; Southwestern Bell Reply at 66-67. Giving 30 days' notice, most say, is required by general Commission tariff rules, good business practice, and standard industry practice. *See* , *e.g.*, GTOC Reply at 39-40; Rochester Reply at 17-18; SNET Reply at 31-32. Ameritech, NECA and US West state that a 30-day notice provision is already in their tariffs, while Bay Springs and Elkhart state that their tariffs provide for notice, but that the exact amount of notice to be given is best negotiated between the LEC and the customer. Ameritech Reply, App. C at 13; NECA Reply at 30; US West Reply at 44; Bay Springs Reply at 8-9; Elkhart Reply at 7-8. Pacific Bell states that its tariff provides for 30 days' notice before initiation of a service, and that it will add a provision for 30 days' notice before any modification of an existing service. Pacific Bell Reply at 45-46.

24. Cincinnati Bell states that, contrary to AT&T's charge that it uses interconnection points rather than billing percentages as required by the ECSA Report, it is in fact using percentages, and its tariff's references to interconnection points are superfluous and will be removed. Cincinnati Reply at 19. Bay Springs acknowledges that it uses interconnection points, but argues that it has the right to do so. Bay Springs Reply at 5-6. Pacific Bell states that it will convert to billing percentages and modify its tariff to incorporate the relevant NECA language. Pacific Bell Reply at 47. NECA notes that it is converting to billing percentages, but that some of its members are still using interconnection points. NECA expresses its intention to continue this phased-in conversion, and objects to AT&T's suggestion of a flash-cut change. NECA Reply at 27.

25. Finally, the LECs object that imposition of MCI's proposed "model filing" would reduce their flexibility, detract from their negotiating posture, and impose requirements beyond those intended by the Commission. *See* , *e.g.*, BellSouth Reply at 87-89.

III. DISCUSSION

26. We have reviewed the access tariff filings, the petitions and objections, and the reply comments. It appears that numerous carriers have disregarded or misunderstood the Commission's and this Bureau's pronouncements on meet point billing tariff revisions. We have decided that, although we will allow these tariffs (with certain minor modifications discussed here) to become effective as scheduled, we will also initiate an investigation into meet point billing issues.

27. The ECSA Report recommendations that were accepted in the *July 1987 Order* included the recommendation that all LECs should follow the standards and guidelines enunciated in the OBF documents, MECAB, MECOD and Carrier Access Billing Output Specifications.[22] We take this opportunity to clarify these guidelines and standards, and to clarify certain requirements imposed by the *July 1987 Order*, in several general areas that stimulated comment in the pleadings. These areas are: (1) the amount and specificity of information to be included in the tariff, including the question of referencing industry standards; (2) justification of the selection of the default option; (3) questions regarding the accuracy and fairness of local transport termination and channel mileage fixed charges; (4) the requirement of 30-day notice; and (5) the use of interconnection points as opposed to billing percentages in meet point billing calculations.

A. Specificity of Information: Reference to Industry Standards

28. MCI objects to the paucity and vagueness of information in many of the filings, and AT&T asserts that the LECs should be required to reference industry standards, including MECAB and MECOD, in their tariffs. Responses from the LECs indicate a general unwillingness to be more specific or to reference industry standards. Filing carriers state generally, for example, that specifying which meet point billing option is to be used in each arrangement would prove burdensome and costly, and that flexibility would be lost as any change of methodology would require a tariff revision with its concomitant paperwork and delay. While we understand AT&T's and MCI's desire to have precise knowledge of the methodologies used in calculating charges in meet point billing arrangements, we agree with the LECs that it would be inappropriate to list these specifics in their tariffs. The Commission has said since the inception of the access tariff proceedings in CC Docket No. 83-1145 that full information regarding such arrangements would be made available at the time of ordering service.[23] The 30 days' notice given of the initiation of a new methodology or a modification of the existing methodology should insure that the access customer is aware of the details of the method to be used, without our requiring that such details be included in the tariff. We find that it would be unreasonable to insist on full specifics for merely potential arrangements, and that provision of such specificity is not required until the ordering stage.

29. It is also clear, however, that the amount and kind of information provided to customers by LECs are often inadequate. The *July 1987 Order* terminated the generalized waivers of past years, ordered that meet point billing be implemented, and established that certain implementation standards must be followed by the LECs. That Order suggested that the ECSA Report and its incorporated MECAB and MECOD recommendations were the appropriate standards, calling the Report a "blueprint" for meet point billing implementation. It is clear from the tariff filings now before us that many filing parties have declined to follow this blueprint. We do not agree with those carriers who state that this approach will unduly decrease their flexibility or will remove the ICs' incentive to negotiate fairly. On the contrary, we believe that the establishment of a common ground of requirements and understandings will serve to facilitate negotiation and agreement.

30. Because these standards are essential to the successful and fair implementation of meet point billing, and because we believe that carriers' adherence to these standards will increase customer certainty and administrative efficiency, we have determined that a waiver of Section 61.74(a) of the Commission's Rules, 47 C.F.R. § 61.74(a), for the express purpose of allowing each tariff to reference among its technical publications both the MECOD and the MECAB standards, is appropriate and necessary. This Order will accordingly grant such a waiver, and require each carrier to modify its meet point billing tariff revisions to accept and adhere to these standards, placing them in the section at the beginning of the tariff covering technical references.[24]

31. As noted above and in the *July 1987 Order*, the MECOD and MECAB guidelines were developed by an industry group. The Commission, concerned with the perceived difficulties of administration that meet point billing presents, accepted the industry's guidelines on these issues. We seek to implement those standards and their application to the tariffs presently before us. We believe that the reference of the MECOD and MECAB standards will help to resolve many of the questions raised about the specificity and amount of information, notice, and billing percentages, as discussed below.

32. Except for cases involving the single bill/single tariff option, the MECOD guidelines recommend that for joint service provisioning, prior to implementation of specific meet point billing arrangements, the LECs involved should develop a mutually agreeable working arrangement to allow one of the LECs to perform an access service coordination (ASC) function for jointly provided services. This may vary by type of order and customer service ordered. The LEC assuming this responsibility will generally perform the order negotiation function and will generally perform the design function, unless local circumstances require that a non-ASC LEC perform the design function. Each LEC should work cooperatively with the customer and other LECs to ensure that access services are installed, tested and turned up in a timely manner, *i.e.*, a common standard or negotiated interval for all the LECs involved. No LEC should generally start billing its portion of the access service until the joint access service is completed and provided to the customer.

33. These guidelines also suggest that the customer is responsible for distributing an identical common ASRs to all known LECs involved with the access service. The LEC responsible for access service coordination should establish a common circuit identifier, and for usage-based services the initial billing company (IBC), secondary billing companies (SBCs), and transiting carrier(s) must be made known to the customer. The functions of the IBC and SBCs should be explained, and the customer should understand that the same percentage of interstate use (PIU) calculation should be used for jointly provided usage services based on minutes. If a surrogate is used, joint providers should use the same surrogate, which should be specified. The information in this paragraph and the preceding paragraph must be adjusted somewhat for application to the single bill/single tariff option, as the customer will deal with one LEC for its entire service. The procedures can be adjusted to be used with other single bill options (*i.e.*, single bill/multiple tariff and single bill/ pass-through) as well, since only one bill will be used. Therefore, although necessary billing information, such as PIU and minutes, is coordinated due to the use of a single bill, ordering and design coordination should still be included for these two single bill options. This information should be clearly delineated in the tariffs of the joint providers.

34. The guidelines further specify that for all single bill options, the tariff should define single billing as it is defined in the MECAB: a single bill consists of all rate elements applicable to access services billed on one statement of charges under one billing account.[25] For the single bill/multiple tariff option, the tariff should state that interpretation and application of tariffs for non-billing companies must be communicated to the billing company. For the single bill/pass-through option, the tariff should state that each non-billing LEC is responsible for preparing its own bill for its portion of access service, and for forwarding the bill to the billing carrier. The case of the single bill/single tariff option presents questions of cost support and timing that will require further consideration.

35. For single bill/non-single tariff options, the tariff should state that the customer must be informed of the identification of the billing company, the LEC, LECs or billing agent to which payment should be made, the entity or entities to which billing inquiries should be made, and the entity or entities that will be responsible for adjustments to bills. For multiple bill options, we would normally assume that each of the above functions would be handled by each company individually. If this is not the case, the tariff should clearly state that such information will be made available to the customer at the time the ASR is placed with the joint LECs. For multiple bill and single bill/non-single tariff options, the tariffs must state what recurring and non-recurring charges (NRCs) are subject to meet point billing and must clearly delineate what NRCs actually apply for each carrier.

36. Under the guidelines, the tariffs must also be coordinated so that terms regarding cancellation, termination, suspension of service, deposit, advance payments, late payments and other tariff provisions that may affect jointly-provided service and tariffs are clearly indicated. The tariffs should specify that the customer will be informed as to which LEC's provisions apply for single bill/multiple tariff and single bill/pass-through options. In the case of the multiple bill default option, it appears that some of the above provisions -- such as deposits, advance payments, cancellation, termination, and suspension of service -- must also be coordinated and consistent between tariffs for jointly-provided services. Moreover, the impact of purchase of Accounts Receivable should be considered in these provisions.

37. Finally, the guidelines suggest that the tariffs should also state that for usage-rated services, the minutes or amount of usage of the IBC will also be used by the SBCs. The only exception is for the single bill/single tariff option, in which one carrier bills the entire joint service (both its own and resold service) in one bill, and the customer need only deal directly with that LEC. Moreover, whenever the customer makes payment to one LEC, the tariff must clearly state that the other LECs involved will provide the customer with written agency agreements accepting this arrangement.

B. Selection of the Default Option

38. It is clear from the tariff filings before us that some carriers did not understand clearly the strength of the Commission's insistence that the multiple billing option was to be selected as a last resort only. Because the single billing options are so vastly preferable to the default option, carriers using the default option are required to show substantial justification for doing so. We tentatively find that in most cases, LECs have failed to provide sufficient justification for their use of the default option. While we will not reject these tariffs at this time, we intend to examine more closely in our subsequent investigation the LECs' justification. The showing we intend to require in these cases is virtually equivalent to the showing to be made in a request for waiver of the Commission's Rules.[26] Mere unsupported assertions of economic hardship, technological problems, or administrative burden will not suffice.[27] If a carrier asserts that it has been unable to reach agreement with its joint providers, detailed information as to the ongoing attempts at contractual negotiations should

be provided and the reasons for lack of resolution stated. Technical or economic difficulties compelling use of the default option should be detailed, and substantial supporting data provided.

39. Further, those carriers electing to use the multiple billing option will be expected to implement this method in accordance with the requirements of the MECAB regarding verification safeguards.[28] The Commission's strong preference for the single billing options is due in large part to concerns about verification; carriers relying on the default option must therefore meet MECAB standards regarding unique meet point billing account numbers, common dircuit identifiers, cross-reference numbers, and cross reference billing dates. We note again the Commission's determination, and its readiness, noted in the *July 1987 Order*, to reject the tariffs of, or impose a forfeiture upon, carriers failing to include acceptable tariff revisions implementing meet point billing.

C. Termination Charges

40. AT&T raises questions about LTT and CMF charges. While we find that many of AT&T's allegations are unsubstantiated and apparently misdirected, we also find that the underlying concern is valid. No carrier will be permitted to assess a termination charge *per se* when it is an intermediate, non-terminating carrier in a given arrangement unless it fully justifies such application. We recognize, however, that the calculation of LTT and CMF charges is frequently done on an averaged basis, especially, it would seem, by LECs with a high proportion of jointly provided service, rather than a large proportion of service provided solely by that LEC. AT&T has made generalized and unsubstantiated allegations of unfair and unreasonable charges, and we find that these allegations are not a sufficient basis for a rejection or prescription at this time. Nevertheless, we do find that a sufficient question of unlawfulness has been raised to warrant an investigation of the reasonableness, under Section 201(b), of the proposed tariffs. Accordingly, we will further consider issues involving LTT and CMF charges, including the averaging process used in developing transport charges in jointly provided services; the impact of these charges on both jointly-provided circuits and circuits provided solely by an individual LEC; and how the different applications of these charges interact between and among different carriers.

D. Notice Requirement

41. While virtually all responding LECs state a willingness and an intention to provide 30 days' written notice of the inception of a meet point billing arrangement and of any modification thereof, many state that it is inappropriate to include this provision in their tariffs. The waiver we are granting to allow the incorporation of MECAB and MECOD guidelines into the tariff language removes any such obstacle.[29] We tentatively conclude that the tariffs should state that any new or modified method to be used requires notification to the customer by each involved LEC at least 30 days prior to implementation, and we set this matter for investigation.

E. Billing Percentages

42. The October filing stimulated some discussion of the use of interconnection points as opposed to billing percentages in meet point billing calculations. Because MECAB seems to apply the use of billing percentages, and not interconnection points, all carriers will be required to abide by this standard. We recognize, however, that the conversion from interconnection points to billing percentages probably cannot be accomplished instantaneously, and we accordingly allow a six-month phase-in period.

IV. CONCLUSION; ORDERING CLAUSES

43. We have determined that, while none of the tariff revisions before us mandates rejection or suspension, many fall short of the guidelines set forth in the Commission's *July 1987 Order*. Our main concern is to have meet point billing implemented according to those guidelines while causing as little interruption to customers or burden to LECs as possible. We have therefore decided to allow the tariffs, insofar as they comply with the guidelines discussed here and incorporate the modifications set forth below, to become effective on January 1, 1988. We will provide a period thereafter, as discussed below, during which more extensive modifications may be made.

44. The modifications to be made for the January 1, 1988 effective date include the incorporation by reference of the MECOD and MECAB standards accepted by the Commission in the *July 1987 Order*, and the addition of an expiration date of June 30, 1988 for all meet point billing provisions. These reference and expiration provisions must be filed by all LECs that provide for meet point billing in their tariffs. These revisions must be filed on not less than one day's notice to be effective January 1, 1988. We will impose no other requirements at this time, but strongly encourage carriers to take this opportunity to revise their filings to conform them as nearly as possible with the standards referenced, with the Commission's *July 1987 Order*, and with the discussion in this Order.

45. In a forthcoming designation Order, this Bureau will describe the particular questions that warrant further investigation and establish a pleading cycle.

46. Accordingly, IT IS ORDERED that the petitions of MCI Communications Inc. and of the American Telephone and Telegraph Company ARE GRANTED to the extent indicated herein, and otherwise ARE DENIED.

47. IT IS FURTHER ORDERED that a waiver of Section 61.74(a) of the Commission's Rules, 47 C.F.R. § 61.74(a), IS GRANTED for the purpose discussed herein.

48. IT IS FURTHER ORDERED that the special permission requested by BellSouth and by Illinois Consolidated Telephone Company, as discussed above, IS GRANTED, and that permission is also granted to those carriers that expressed in their reply comments a willingness to modify in accord with the policies and standards enunciated herein, to file revised tariff provisions incorporating the provisions discussed herein.

49. IT IS FURTHER ORDERED that all local exchange carriers that use meet point billing arrangements SHALL FILE revisions in keeping with this Order no later than December 31, 1987, to be effective January 1, 1988.

50. IT IS FURTHER ORDERED that Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, ARE WAIVED, and Special Permission No. 87-730 is assigned for these purposes.

51. IT IS FURTHER ORDERED that the above tariff revisions SHALL BE SUBJECT TO AN INVESTIGATION as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, 97 FCC 2d 1082, 1283 (1984).

[2] In Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Mimeo No. 2964, released Mar. 16, 1984, the Bureau waived the requirement until June 1985; in Petitions for Waiver Concerning 1985 Annual Access Tariff Filings, Mimeo No. 5007, released June 7, 1985 we extended the waiver until April 1, 1986; in Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, Mimeo No. 3402, released Mar. 28, 1986 (*March 28 Order*), we extended the waiver until January 1, 1988.

[3] The petitioners cited problems such as the lack of tariff data defining meet points and the listing of necessary billing percentages based on those points, and verification problems with individual access services that are rendered by more than one LEC. *See March 28 Order.*

[4] The ECSA Report recommends that all LECs comply with the following Ordering and Billing Forum documents: Multiple Exchange Carrier Access Billing Guidelines (MECAB); Multiple Exchange Carrier Ordering and Design Guidelines (MECOD); and Carrier Access Billing Output Specifications (CABS).

[5] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, FCC 87-252, 2 FCC Rcd 4518 (1987), Erratum, CC Docket No. 86-104, DA 87-1079, 2 FCC Rcd 4731 (1987) (together, *July 1987 Order*).

[6] The *July 1987 Order* allowed two options: the single bill option or the multiple bill option. The ECSA Report noted that the single bill option could take one of three forms: single bill/multiple tariff; single bill/pass-through tariff; or single bill/single tariff. The ECSA Report concluded that all LECs involved in providing access service for a particular meet point must agree on one alternative in order to implement the single bill option. The Commission, in its discussion, determined that the single bill option, in one of its three forms, was preferable to the multiple bill option because the former enhances billing accuracy and customer convenience in access service bill verification. 2 FCC Rcd at 4519. The Commission stated that the multiple bill option could be used if the LECs involved could not reach agreement, but stated that it should be used as a default option only. *Id.*

[7] Dates Set for Waiver Petitions and Oppositions Concerning Meet Point Billing Deadlines, CC Docket No. 86-104, Mimeo No. 4855, released Sept. 16, 1987.

[8] Petition To Reject or Suspend and Investigate filed by American Telephone and Telegraph Company, Oct. 27, 1987 (AT&T Petition); Petition To Reject or To Suspend and Investigate filed by MCI Communications Inc., Oct. 27, 1987 (MCI Petition).

[9] Petitions were received on October 27, 1987, and replies on November 9, 1987, pursuant to the terms of Procedures for Annual 1988 Access Charge Tariffs to be Filed October 2, 1987, Public Notice, Mimeo No. 4892, DA 87-1297. Supplemental comments were filed on November 19, 1987 pursuant to Annual 1988 Access Tariff Filing, Memorandum Opinion and Order, DA 87-1556, released Nov. 5, 1987.

[10] MCI cites the relevant pages of the tariff filings of Bell Atlantic, BellSouth, National Exchange Carrier Association, Inc. (NECA), Southwestern Bell, Mountain Bell, Northwestern Bell, Pacific Northwest Bell (US West), Pacific Bell, Nevada Bell, General Telephone Operating Companies (GTOC), Continental Telephone Companies (Contel), and Central Telephone Companies (Centel). *Id.* at nn. 88-97.

[11] MCI states that specific billing elements, such as billing account cross-references, common exchange carrier circuit identifier, cross- reference bill cycle dates, and the billing percent covered by each bill, are needed to assist the IC in verifying invoices. MCI Petition at 64-65.

[12] AT&T names Ameritech, BellSouth, Cincinnati Bell, Nevada Bell, Pacific Bell, US West, Alltel, Contel, United, GTOC, GVNW, Bay Springs Telephone, Elkhart Telephone, Chillicothe, Lincoln, Fidelity, Union, Illinois Consolidated, Citizens, and Orchard Farm in connection with this charge. AT&T further states that the Commission should suspend and investigate NECA's "non-meet point billing" alternative.

[13] AT&T states that Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell, Southwestern Bell, Pacific Bell, US West, Contel, Rochester, United, NYT, NET, SNET, Lincoln, Chillicothe and Fidelity improperly impose such charges.

[14] AT&T targets NECA, Alltel, Centel, Contel, GTOC, Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell, NET, NYT, Pacific Bell, SNET, Southwestern Bell, US West, United, Lincoln, Chillicothe and Fidelity.

[15] BellSouth, SNET, NYT, NET, Alltel, Rochester, Southwestern Bell, Bell Atlantic, Pacific Bell, Lincoln, Illinois Consolidated, Bay Springs, Elkhart, Chillicothe, Union, Orchard Farm, Fidelity, Citizens and GVNW have failed to provide such notice, according to AT&T.

[16] Ameritech, Bay Springs, Bell Atlantic, BellSouth, Centel, Chillicothe, Cincinnati Bell, Contel, Elkhart, GTOC, GVNW, Lincoln, MCI, NECA, Nevada Bell, NYNEX, Rochester, SNET, Southwestern Bell, United, and US West filed replies that discuss meet point billing. Fidelity, Citizens, Orchard Farm and Alltel did not file reply comments.

[17] Several reply comments note that Section 61.74(a) of the Commission's Rules, 47 C.F.R. § 61.74(a), forbids the inclusion in a tariff of any reference to an outside published document, and that the *July 1987 Order* did not grant special permission to waive this Section. *See , e. g.*, Ameritech Reply, App. C at 14. Further, Contel cites a Commission Order as support for the proposition that LECs should not be required to include provisions in their tariffs that contain requirements established by industry forums. Contel Reply at 46 (citing Annual 1985 Access Tariff Filings, Memorandum Opinion and Order, CC Docket No. 86-125, Phase II, released Mar. 9, 1987, at paras. 202-203).

[18] 2 FCC Rcd at 4521.

[19] *Id.*

[20] NECA further states that when all LECs providing a joint service are members of the NECA traffic sensitive (TS) pool, there is no need to cross-reference a participating carrier in a non-meet point billing situation. *Id.*

[21] Rochester Reply at 16-17; United Reply at 19; Lincoln Reply at 6; Cincinnati Bell Reply at 18; SNET Reply at 30; Contel Reply at 49-50; Chillicothe Reply at 5; US West Reply at 42-43; Southwestern Bell Reply at 68; Bell Atlantic Reply, App. A, Item 35; and NYNEX Reply at 124. Ameritech explains its charges and offers to waive any termination charges if it is the intermediate carrier, if the Commission requests it to do so. Ameritech Reply, App. C at 14-15. Pacific Bell states that it will modify its tariff to

eliminate such charges when it is an intermediate carrier, and to adjust the charges depending on whether it terminates one end or both ends. Pacific Bell Reply at 46.

[22] 2 FCC Rcd 4519-20, 4524 n.8.

[23] *March 16 Order*, *supra* note 2, at para. 7.

[24] Because the MECAB and the MECOD are updated and revised periodically, as are the technical publications in the same section, we will require that tariff references specify the date of publication and the availability of each.

[25] While the single bill/single tariff resembles the single company arrangement rejected by the Commission in its *March 28 Order*, the significant distinction is that in the former, the relationship between the billing carrier and the other joint LEC provider(s) is a tariff relationship, while in the latter, the relationship is strictly contractual.

[26] NECA has filed an annual access tariff which proposes to apply single company non-meet point billing to FGC, FGD, Directory Assistance, and Special Access when provided from the same tariff and as part of a revenue-sharing agreement. These arrangements fail to comply with the Commission's requirements. NECA, and any other carriers in this situation, should submit a petition for waiver delineating the specific circumstances involved.

[27] *See* Public Notice of September 16, 1987, *supra* n.7. This Notice reiterated the strict standard established in the *July 1987 Order*, and stated that waiver requests should be narrowly drawn, and should contain sufficient supporting data and explanation to permit the Commission to assess the alleged justification for waiver. The waiver petitions should be specific as to the carriers involved, if the petitioner proposes to use meet point billing in some instances but not others. Further, the Notice stated that no indefinite waivers would be granted, and that technical and economic justifications should be stated in detail. Finally, the Notice stated that if it appeared that carriers were failing to comply with the *July 1987 Order* without adequate excuse, the Commission retained the power to remedy dilatory conduct through prescription, or otherwise.

[28] We have received a request for special permission from Illinois Consolidated Telephone Company to permit revisions to its Tariff F.C.C. No. 2 on less than statutory notice in order to incorporate the multiple billing option to become effective January 1, 1988. We will grant the permission requested, but note that Illinois Consolidated Telephone Company will also be held to the standards discussed herein and will be expected to modify its tariff accordingly.

[29] We have received a request for special permission from BellSouth to allow it to revise its Tariff F.C.C. No. 1 to include a 30-days' notice provision to be effective January 1, 1988. We will grant BellSouth permission to so modify its tariff, and we encourage other LECs that expressed a willingness to include this provision in their tariffs, to do so in the revisions ordered herein to be effective January 1, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 87-390

In the Matter of

Amendment of Parts 2 and 22 of the
the Commission's Rules to Permit
Liberalization of Technology and
Auxiliary Service Offerings in the
Domestic Public Cellular Radio
Telecommunications Service

ORDER GRANTING
EXTENSION OF TIME

Adopted: December 10, 1987; Released: December 16, 1987

By the Office of Engineering and Technology:

1. The Commission has received requests to extend the comment and reply periods established in the *Notice of Proposed Rule Making* (*Notice*) of this proceeding. Requests were submitted by the Cellular Telecommunications Division of Telocator Network of America (Telocator) and International Mobile Machines Corporation (IMM). The *Notice*, released October 15, 1987, stated that comments were due by December 15, 1987, and replies were due by January 15, 1988. Telocator requests an extension of these dates to January 22, 1988, and February 22, 1988, while IMM requests a 45 day extension.

2. Telocator and IMM request an extension of time in order to provide the Commission with a more complete record in this proceeding. Telocator is performing an engineering analysis to investigate out-of-band system interference and frequency usage constraints. Since the analysis is not expected to be complete by December 15, Telocator requests additional time to file comments. IMM is currently evaluating the economic feasibility of developing spectral-efficient digital cellular equipment. Since IMM is the only supplier of digital cellular equipment and it has only recently received type-acceptance to do so, it requires additional time to perform a meaningful analysis of the liberalization of technical standards. Given the important interference, spectrum utilization and complex technical questions raised, Telocator and IMM believe that an extension of time will allow interested parties to compile the information which a proceeding of this nature demands.

3. The Commission concurs with Telocator and IMM in that engineering information which includes studies of out-of-band system interference, frequency usage constraints and the feasibility of digital equipment will improve the record of this proceeding. We realize the issues raised in our proposal may have a far reaching impact on the Domestic Public Cellular Radio Telecommunications Service. We believe that an extension of 30 days should provide interested parties with ample time to respond to the issues raised. Hence, we extend the periods for filing comments and replies in this proceeding to January 15, 1988; and February 15, 1988.

4. This action is taken pursuant to authority found in Section 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 302, and 303, and pursuant to Sections 0.31 and 0.241 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-79

In the Matter of
Furnishing of Customer Premises
Equipment by the Bell Operating
Telephone Companies and the
Independent Telephone Companies

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: December 15, 1987; Released: December 17, 1987

By the Commission:

I. INTRODUCTION

1. We have received three petitions seeking reconsideration of various aspects of our decision in the *BOC CPE Relief Order*,[1] which permits the Bell Operating Companies (the BOCs) to offer customer premises equipment (CPE) free of the structural separation requirements of the *Second Computer Inquiry* [2], provided that they comply with certain nonstructural safeguards. These safeguards include nondiscrimination measures, such as a requirement that the BOCs file quarterly reports on the installation and maintenance of basic services, a network information disclosure obligation, restrictions on the use of customer proprietary network information (CPNI), and a "joint marketing requirement that provides independent CPE vendors with a meaningful opportunity to market their CPE jointly with Centrex and other BOC network services. We did not extend these safeguards to the independent telephone companies (ITCs). The ITCs had not been subject to the structural separation requirements that these nonstructural safeguards were designed to replace. Based on our review of the reconsideration pleadings, [3] we conclude that the nonstructural safeguards established in the *BOC CPE Relief Order* are fundamentally sound and should not be altered. Furthermore, we decline to require GTE to establish Centralized Operations Groups (COGs) to process installation requests of their CPE competitors and their customers. However, we modify and clarify several aspects of the nonstructural safeguards. We conclude that each BOC may choose to file either the quarterly maintenance reports specified in the *BOC CPE Relief Order* or an annual affidavit, signed by one of its officers, that attests that it has followed the maintanence procedures described in its compliance plan filings and that the company has not, in fact, discriminated in the provision of network maintenance on the basis of a customer's CPE vendor. In addition, we clarify that, while we require the BOCs to notify their customers' annually of their CPNI rights, a customer's request for confidential treatment of its CPNI need not be renewed annually to remain effective. We also clarify that a customer's request for confidential treatment of its CPNI may be made prior to the receipt of its first annual notification of its CPNI rights from the BOC.

II. BACKGROUND

2. In the *Second Computer Inquiry*, we conducted an extensive examination of the most appropriate regulatory framework for the provision of CPE and enhanced services by telephone companies and others. We determined that the provision of CPE and enhanced services were not common carrier communications services. We also found that "the terminal equipment [CPE] market is subject to an increasing amount of competition . . ., "[4] and that the market for enhanced services also is competitive. Accordingly, we concluded that regulation of CPE and enhanced services was no longer warranted under Title II of the Communications Act, and we preemptively deregulated those markets. We expressed concern, however, that in providing such products and services certain regulated carriers could use their market power in basic network services either to shift costs improperly from unregulated to regulated activities or to discriminate against other vendors' products and services. Therefore, we decided that such carriers could provide CPE and enhanced services only through a subsidiary that is separated from their basic network service operations.[5] We applied the structural separation requirements to the American Telephone and Telegraph Company (AT&T), and after the divestiture of the BOCs from AT&T, we extended those requirements to the BOCs as well.[6]

3. In 1985 we removed the structural separation requirements from AT&T's CPE operations and replaced those requirements with certain nonstructural safeguards. Similarly in 1986, in the *BOC CPE Relief Order*, we removed the structural separation requirement from the BOCs' provision of CPE. We concluded that, in light of the high costs of structural separation in terms of the inefficiencies that it imposes on the BOCs and consumers, the public interest would be better served by permitting the BOCs more flexiblity in organizing their operations for providing CPE and basic network services.

4. We replaced mandatory structural separation with five nonstructural safeguards to prevent improper cross-subsidization and discrimination. First, we required the BOCs to apportion the joint and common costs of providing regulated and nonregulated services in accordance with the requirements of our *Joint Cost* proceeding.[7]

5. Second, we established two sets of requirements for the disclosure of network technical and market information relating to any new or modified network service that would affect the interconnection of CPE. We determined that for a BOC that certifies that it will not engage in CPE research, development, or design, we would retain the *Computer II* network disclosure rules, because such a BOC resembles a structurally separate carrier for network disclosure purposes. We also required each BOC that does not so certify (a noncertifying BOC) to disclose the network information at the "make/buy" point[8] to CPE manufacturers and vendors willing to agree to treat the information as confidential and generally to disclose the network information to the public twelve months before introduction of the new or modified network service.

6. Third, we required the BOCs to establish procedures that would permit customers to limit dissemination of their CPNI to BOC personnel involved only with network

services. We also required the BOCs to make a customer's CPNI available to competing CPE vendors at the customer's request on the same terms and conditions as it is made available to BOC CPE personnel. Moreover, we required the BOCs to notify their multiline business customers annually of their CPNI rights. Finally, we required the BOCs to file a plan describing the procedures they will establish to implement these CPNI safeguards.

7. Fourth, as a nondiscrimination measure, we required BOCs to maintain COGs as organizations available to the entire CPE vendor community and to customers with non-BOC CPE as optional points of contact, installation, coordination, and administration with the BOCs. In addition, we required the BOCs to file nondiscrimination plans that describe the specific procedures they will use to ensure that they will not discriminate in their provision of basic network services to customers with non-BOC CPE. We also required the BOCs to file quarterly installation and maintenance reports on the time intervals necessary for the BOCs to install and repair network services for their own CPE customers, compared to such intervals for customers of their CPE competitors.

8. Fifth, we required the BOCs to file plans that describe the procedures they will implement to ensure that independent CPE vendors are provided with a meaningful opportunity to market Centrex and other BOC network services through sales agency arrangements or other functionally equivalent means.

III. RECONSIDERATION ISSUES

A. Network Disclosure

9. The general network disclosure rule of the *BOC CPE Relief Order* requires a noncertifying BOC to notify the CPE industry at the make/buy point that a new or modified network service is under development. Disclosure of network information to the BOC's CPE competitors at the make/buy point may be limited to those competitors willing to execute a nondisclosure agreement, but disclosure to the public generally must occur twelve months before introduction of the new or modified network service.[9]

1. Positions of the Parties

10. In its petition, Ameritech requests that the public disclosure period be reduced from twelve months to six months before the introduction of a new or modified network service. It maintains that the benefits of nondisclosure agreements are vitiated by the twelve-month period because, it argues, a BOC must publicly disclose the very information protected by such an agreement shortly after the agreement takes effect.[10] In addition, Ameritech argues that a long public disclosure period is unnecessary, since the CPE industry can acquire the network information at the make/buy point subject to nondisclosure agreements.[11] It contends that the only members of the public who benefit from a twelve-month public disclosure period are those CPE vendors and manufacturers that decline to execute a nondisclosure agreement because of the impracticability of keeping the information from their network service personnel.[12] Supporting Ameritech's proposal to shorten the public disclosure period to six months, US West argues that a twelve-month disclosure period will cause it to delay implementation of new or modified network services since such a requirement would prevent the rapid deployment of easily designed or assembled "customer serving arrangements."[13]

11. IDCMA and NATA oppose Ameritech's proposal for a six-month public disclosure period. They contend that we rejected such a proposal in the *BOC CPE Relief Order* and that the BOCs' arguments for reconsideration provide no new information that would warrant a change in this requirement.[14] In addition, IDCMA maintains that Ameritech's proposal for a six-month public disclosure period will prevent those CPE vendors and manufacturers that are unwilling to execute a nondisclosure agreement from obtaining network information in time to market CPE products when a BOC implements a new service.[15] IDCMA states that, while Ameritech focuses on integrated CPE and network *services* companies as being the only beneficiaries of the twelve-month rule, integrated CPE and network *equipment* manufacturers may also be reluctant to sign nondisclosure agreements and would also benefit from a longer public disclosure period.[16]

2. Discussion

12. We decline to modify the twelve-month public disclosure period of our network disclosure safeguard. The primary goals of this safeguard are, (1) to prevent the BOCs from designing new network services or changing network technical specifications to favor their own CPE or that of a preferred manufacturer, and (2) to ensure the most rapid dissemination of such network information to competing CPE providers. In this process, we permit the use of nondisclosure agreements at the make/buy point to facilitate disclosure of the BOCs' network information as early as possible without unnecessarily jeopardizing their proprietary interests, or those of their network equipment suppliers.

13. While the make/buy point remains the primary trigger for network disclosure, we recognize the importance of retaining a reasonable point at which disclosure to the general public will occur. We retain the existing twelve-month period as a viable alternative source of information for those entities unable or unwilling to enter into a nondisclosure agreement at the make/buy point. For example, as we indicated in the *BOC CPE Relief Order*, some firms that manufacture both CPE and network equipment might not be able to enter into such nondisclosure agreements without implementing some form of structural separation for their own operations. The public disclosure rule will allow them to obtain information on network changes affecting CPE interconnection in a reasonably timely fashion. As such, this rule represents an attempt to balance the competing interests of these manufacturing firms in early disclosure with the interests of the BOCs in maintaining this information as confidential. Ameritech has not convinced us that we have struck that balance improperly.

14. In addition, we do not agree with US West's claim that a twelve-month public disclosure period will unduly delay implementation of new or modified network services. On the contrary, our network disclosure safeguard makes specific provision for the expeditious implementation of new or modified network services that a BOC can offer more quickly than twelve months after its make/buy decision. In light of US West's concerns, however, we think it would be useful to summarize briefly the operation of the network disclosure rules at issue.[17] These rules mandate that if, as is usually the case, the make/buy point occurs more than twelve months before the introduction of a new or modified network service, noncertifying BOCs

have two complementary network disclosure obligations. First, they must disclose the requisite network information to interested members of the CPE industry at the make/buy point, but such disclosure may be conditioned by the BOCs on the execution of nondisclosure agreements. The use of such nondisclosure agreements will aid the BOCs in protecting the proprietary nature of innovative network services. Second, the BOCs must disclose such information to the public twelve months before the introduction of the new or modified network service. On the other hand, if the make/buy point occurs less than twelve months before the introduction of the new or modified service, the BOCs have only a public disclosure obligation, which occurs at one of two possible points in time. If the BOCs are able to introduce the service between six and twelve months after the make/buy point, public disclosure must occur at the make/buy point. If the BOCs are able to introduce the service in less than six months after the make/buy point, public disclosure must occur six months before the introduction of the service. Thus, this approach permits and encourages rapid introductions of new or modified network services by the BOCs while ensuring early dissemination of network information to the CPE industry.

B. Customer Proprietary Network Information

15. The CPNI safeguard adopted in the *BOC CPE Relief Order* requires, in part, that the BOCs establish procedures that will permit customers to limit the dissemination of their CPNI to those BOC personnel involved only with network services. If customers do not request such a limitation, the BOCs' CPE personnel will have access to the CPNI. This safeguard also provides the customer with the right to have his CPNI provided to any CPNI vendors of his choosing and requires the BOCs to provide their multiline business customers with annual notification of their CPNI rights.

1. Positions of the Parties

16. In its petition, ICA argues that the CPNI safeguard adopted in the *BOC CPE Relief Order* provides the BOCs with an unfair advantage over their CPE competitors and does not protect customers' proprietary interests.[18] In light of these concerns, it requests that we alter the CPNI requirement to prohibit BOC CPE personnel from accessing CPNI unless a customer gives prior affirmative approval.[19]

17. ICA argues that the CPNI possessed by the BOCs is valuable for marketing CPE and that the present CPNI safeguard, which is essentially identical to that imposed on AT&T, will give the BOCs an unfair competitive advantage. It states that contrary to the Commission's finding in the *BOC CPE Relief Order*, the CPNI possessed by the BOCs has greater value for CPE purposes than the CPNI possessed by AT&T, and thus should be subject to a stronger safeguard.[20] ICA maintains that network information about local services and local traffic is essential for CPE marketing and that such information is under the sole control of the BOCs.[21] ICA contends that the CPNI safeguard contained in the *BOC CPE Relief Order* allows the BOCs to be the only CPE vendors to gain access to this valuable local network data without first seeking customers' affirmative approval.[22] According to ICA, its suggested modification of the safeguard would maintain the practice in existence before the removal of structural separation requirements in the *BOC CPE Relief Order* -- namely that a customer's affirmative consent, via a letter of agency, was required before its CPNI could be disclosed to any CPE vendor.[23] API, another user group, and IDCMA, an association of manufacturers of data CPE, support ICA's petition.[24]

18. ICA also maintains that customers that depend on multiple CPE sites, multiple billing addresses, or service from multiple BOCs will have difficulty controlling the dissemination of their CPNI under the current CPNI safeguard.[25] It contends that information regarding the use of switched and special exchange access, as well as local exchange facilities, reveals to the BOCs the level of network utilization that occurs at individual company facilities. ICA argues that this is critical proprietary information for many users.[26] According to ICA, knowledge of such access usage permits the BOCs to derive such information as: (a) the number of PBX trunks or Centrex lines that any customer will use; (b) the demand for key telephone, PBX, or other equipment; (c) the efficiency of concentrating local exchange service in specialized types of CPE or network equipment; (d) the likelihood that the customer may need to expand or upgrade some or all of its CPE; and (e) the data processing applications that can be used with special access, local private lines, or virtual private line access services.[27]

19. In response to ICA, several BOCs maintain that customers' interests in their network information are adequately protected by that part of our CPNI rules requiring the BOCs to notify customers annually of their right to have CPNI withheld from BOC CPE marketers.[28] Moreover, the BOCs discount the value of CPNI for CPE marketing purposes, arguing that multiline business customers are sufficiently sophisticated that they are likely to solicit multiple CPE bids before making a purchase,[29] and that the most valuable CPNI is that obtained directly from the customer, which is equally available to the BOCs and independent CPE vendors.[30] BellSouth contends that the prior authorization approach proposed by ICA: (a) is contrary to the goal of efficient, integrated provision of CPE, one of the benefits of structural relief;[31] (b) is inconsistent with the approaches adopted for AT&T's provision of CPE and for the BOCs' and AT&T's provision of enhanced services in *Computer III* ; (c) is more stringent than the original CPNI rules in *Computer II*, which allowed the BOCs to access CPNI, provided that they disclosed it to other CPE vendors; and (d) will force the customer to deal only with BOC network services personnel until the customer allows the BOC CPE personnel to access the CPNI, which will impose a form of structural separation on the BOC and deny the customer the benefits of a single point of contact.[32]

2. Discussion

20. We decline to alter our CPNI safeguard, which properly balances several countervailing considerations. In developing this safeguard, we realized that once the structural separation requirements were removed, the BOCs' CPE operations would have unrestricted access to their customers' CPNI, absent the establishment of some rule to the contrary. We also recognized that for competitive purposes, a pure "equal access " approach would be either to prohibit the BOCs' CPE operations from obtaining CPNI or to require the dissemination of a customer's CPNI to all interested CPE vendors. We felt, however, that the first approach would undermine the BOCs' ability to engage in the effective joint marketing of network services and CPE,

a significant benefit for the BOCs and their customers that we believed would result from the removal of structural separation, while the second approach would violate the proprietary interest that users have in their CPNI. We concluded that a middle course that incorporated some limitations on the dissemination of such information was necessary. Given that the BOCs' basic service operations already possess the CPNI, and that we were permitting them to integrate their CPE and basic service operations, we had two choices. We could allow integrated BOC CPE/basic service operations to access CPNI absent customer prohibition of such access. Alternatively, we could prohibit the BOCs' CPE operations from accessing the CPNI until the customer authorized such access. In evaluating these two alternatives, we attempted to balance efficiency, competitive, and confidentiality concerns to develop an approach that best served the public interest.

21. We chose the first alternative for four reasons. First, we found that customers ultimately would benefit under this CPNI approach from the increased availability of efficient, integrated CPE/network service solutions from BOCs and competing CPE vendors. The CPNI approach adopted in the *BOC CPE Relief Order* would encourage BOC personnel to develop and market such solutions for specific customers. Indeed, to the extent the BOCs are able to identify from CPNI certain customers whose telecommunications needs are not being met effectively and use that information to make a sales approach with a better combination of CPE and network services, the customer would seem to be benefitted.[33] Furthermore, because major customers are likely to solicit offers from competing CPE vendors after a BOC's joint sales force approaches the customer, integrated system solutions offered by the BOCs could generate CPE sales and benefit the CPE industry generally.[34] Second, we found that the CPNI possessed by the BOCs would not, in most cases, endow them with a substantial competitive advantage for purposes of marketing CPE.[35] Third, we concluded that proprietary interests of users would be fully protected by permitting customers to retain control over the use of their CPNI.[36] Indeed, our CPNI rules provide BOC customers with more specific confidentiality rights than those available until fairly recently in BOC service areas or currently in non-BOC service areas. And fourth, we found that, such an approach was consistent with the CPNI safeguard adopted for AT&T's integrated CPE/network service operations,[37] and that the BOCs' use of CPNI did not raise competitive or confidentiality concerns sufficently different from those applicable to AT&T to warrant a more restrictive set of safeguards. We remain convinced of the merit of these reasons and, accordingly, decline to modify the CPNI safeguard adopted in the *BOC CPE Relief Order*.[38]

22. In light of ICA's concerns,[39] however, we direct the Common Carrier Bureau, in its review of the BOCs' compliance plans, to take steps to ensure that those plans permit customers to restrict BOC use of their CPNI in an easy and convenient fashion. Moreover, in this Order, we clarify two aspects of our CPNI safeguard. First, although we require each BOC to notify its multiline business customers annually of their CPNI rights, a customer need not annually request that its CPNI be withheld from the BOC's CPE operations; a customer's assertion of confidentiality remains in effect until the customer explicitly states otherwise. Second, we clarify that a customer may request and receive confidential treatment of its CPNI before the customer receives the first annual notification of its CPNI rights from the BOC. These clarifications should allay many of ICA's concerns the dissemination of a customer's CPNI under the current rule.

C. Nondiscrimination Maintenance Reports

23. In the *BOC CPE Relief Order*, we required the BOCs to file quarterly installation and maintenance reports to ensure that they do not provide their CPE customers with network services superior to those they provide to the customers of their CPE competitors. We directed that these reports compare the time intervals that a BOC takes to install or repair network services for customers of CPE provided by BOCs with the corresponding intervals for customers with CPE provided by independent vendors.

24. To comply with the maintenance reporting requirement, the BOCs have proposed to identify a customer's CPE vendor either through a "tracking mechanism" or a survey. Using a tracking mechanism, a BOC would match information about a customer's CPE vendor with information about the maintenance of the customer's network services. Most BOCs that propose to follow this approach have stated in their compliance plans that such information will be consolidated by identifying the customer's CPE vendor in the BOC's maintenance order processing databases.[40] As an alternative approach, a BOC would select an independent firm to survey a random sample of a BOC's network service customers who have recently received installation or maintenance service to determine the identity of their CPE supplier. Four of the BOCs intend to rely on tracking to prepare their maintenance reports, while the remaining three BOCs plan to use surveys.

1. Positions of the Parties

25. Several BOCs request removal of the maintenance reporting requirement. They argue that such a reporting requirement is unnecessary because three factors prevent them from providing discriminatory maintenance service on the basis of a customer's CPE vendor. First, the BOCs contend that the databases used in their network services maintenance operations do not contain information about the identity of a customer's CPE vendor.[41] Second, the BOCs claim that their internal procedures for establishing and meeting maintenance due dates do not depend in any way on the identity of a customer's CPE vendor.[42] Third, because large customers usually own CPE from more than one CPE vendor, the BOCs argue that it would be a futile exercise to attempt to identify customers by CPE supplier and discriminate on that basis.[43]

26. In addition, the BOCs assert that there are several problems with instituting the major systems modifications necessary to employ either tracking or surveys for purposes of maintenance reporting. The BOCs contend that tracking would create the anomalous result of providing them with the very information with which to discriminate.[44] While the BOCs acknowledge that AT&T currently obtains its requisite CPE information for maintenance reports via surveys, they claim that this approach would not be feasible for them. First, because of the BOCs' relatively small CPE base, they state that the use of random surveys to determine the maintenance experience of their CPE customers is not as statistically reliable for them as it is for AT&T.[45] Second, Ameritech claims that its survey results are not mechanically compatible with its maintenance data

bases. Thus, to comply with the reporting requirement, it would be required to conduct a manual, virtual circuit-by-circuit comparison of the requisite CPE information with the repair intervals.[46] Third, Southwestern Bell argues that the survey method may be an unreliable means of ascertaining a customer's CPE vendor when the customer possesses CPE from more than one vendor.[47]

27. More generally, the BOCs argue that the modifications to their maintenance data bases that are necessary to develop and generate the maintenance reports would be prohibitively expensive and time consuming.[48] They also note that this Commission eliminated a similar maintenance reporting requirement in the past.[49] The *Sales Agency Reconsideration Order* eliminated a requirement that the BOCs report "average times for order processing installation and maintenance for the customers of the subsidiaries and for the customers of each unaffiliated sales agent," finding that the burden of such reports outweighed their benefit.[50] The BOCs observe that our *Sales Agency Reconsideration Order* eliminated the only report previously required concerning BOC maintenance performance.[51] The BOCs also contend that there has been no evidence of discrimination in their provision of maintenance that justifies this reporting safeguard.[52] Finally, the BOCs argue that their maintenance personnel have no incentive to discriminate on the basis of a customer's CPE, because these personnel are compensated on their ability to meet standardized due dates and service intervals for all network service customers, regardless of the manufacturer of the customer's CPE.[53]

28. In response to these BOC arguments, IDCMA contends that the policy reasons for the maintenance requirement have not changed since the adoption of the *BOC CPE Relief Order*, and that this requirement is necessary to deter the BOCs from abusing their control of bottleneck local exchange facilities.[54] Furthermore, IDCMA claims that maintenance reporting by the BOCs will enable this Commission to compare the performances of AT&T and the BOCs.[55] IDCMA also contends that BOC discrimination in this area is still possible, despite the absence of information regarding the identity of a customer's CPE vendor, because BOC personnel can circumvent normal processes to favor customers that own BOC CPE.[56] Finally, IDCMA discounts BOC arguments regarding the costs of modifying BOC maintenance systems to generate the requisite reports. IDCMA notes that the BOCs do not quantify those costs.[57]

2. Discussion

29. Based on the record before us, we replace the mandatory quarterly maintenance reports of the *BOC CPE Relief Order* with an option for each BOC either to (a) file quarterly maintenance reports as specified in that Order, or (b) submit annually an affidavit, signed by the BOC officer who is responsible for maintenance operations, attesting that the company has followed the maintenance procedures described in its compliance plan and that it has not, in fact, discriminated in the provision of network maintenance on the basis of a customer's CPE vendor. We now believe that there is little apparent likelihood that the BOCs can or will discriminate on the basis of the identity of the CPE vendor in the maintenance of network services.

30. Because the BOCs' maintenance data bases presently do not contain the data necessary to identify a customer's CPE provider, it appears problematic that the BOCs' maintenance operations would be able to discriminate on that basis.[58] The record demonstrates that the BOCs databases do not contain the CPE data necessary to generate the maintenance reports and that there are significant problems with instituting a tracking or survey mechanism to obtain this information.[59] Moreover, because maintenance usually occurs well after the sale of CPE, there is little CPE marketing advantage to be gained by discriminating at the time when maintenance occurs, which may not even be known at the time of CPE sale. While the BOCs conceivably could hope to gain some advantage in the CPE market place by establishing a reputation for providing superior network service maintenance to their CPE customers, it is highly improbable that such a strategy could be made known to CPE customers without being discovered by their CPE competitors and this Commission.[60] In addition, we note that the record indicates that BOC personnel practices make the discriminatory provision of maintenance services unlikely. For example, it appears that BOC maintenance employees are compensated on their ability to meet all due dates expeditiously, regardless of whose CPE a customer possesses, and are warned that they will be disciplined if they discriminate. Finally, based on these factors, we find that the mandatory imposition of the maintenance reporting requirement is unnecessary.[61]

31. In light of this finding, we conclude that mandatory maintenance reporting could be unduly burdensome and unnecessary to ensure nondiscrimination, and we decline to require such reporting.[62] Instead, we permit each BOC to file an annual affidavit with this Commission, signed by the BOC officer responsible for the BOC's maintenance operations, that attests that the BOC has followed the maintenance procedures that it has described in its compliance plan filings with this Commission,[63] and that the company did not, in fact, discriminate in providing network maintenance on the basis of a customer's CPE vendor.[64]

D. Joint Marketing

32. The *BOC CPE Relief Order* also requires the BOCs to provide independent CPE vendors with a meaningful opportunity, through sales agency plans or other functionally equivalent means, to market their CPE jointly with Centrex and other BOC network services. We have described this safeguard as the "joint marketing" requirement.

1. Positions of the Parties

33. Ameritech seeks the elimination of the joint marketing requirement by arguing that sales agency programs are no longer necessary for regulatory purposes and should not be required.[65] It claims that while the sales agency requirement was originally adopted during the *Computer II* regime to serve as a "benchmark" to guard against possible BOC payments of subsidy-level commissions to their structurally separate CPE affiliates, the rules of the *Joint Cost Order* adequately address this concern.

34. Supporting Ameritech's petition, PacTel contends that mandatory sales agency programs are unnecessary because all independent CPE vendors, including those that are not sales agents, can procure network services for their customers in order to provide customers with integrated CPE/network service packages. In addition, PacTel states that competition for the integrated CPE/network service offerings of the BOCs already exists, particularly through

PBX offerings that compete with BOC Centrex services. Moreover, PacTel contends that, contrary to our finding in the *BOC CPE Relief Order* that independent CPE vendors might provide integrated marketing to CPE customers that the BOCs would not serve, independent CPE vendors market their products primarily to large telecommunications users. In fact, according to PacTel, the BOCs are more likely to market to smaller users. According to PacTel, BOCs with sales agency programs now in place should be able to comply with the joint marketing requirement through means other than a mandatory sales agency program. [66]

35. IDCMA and NATA oppose Ameritech's petition, arguing that sales agency programs promote fairness in the CPE industry by providing joint marketing opportunities to independent CPE vendors and by compensating such vendors for network marketing costs through the payment of commissions. In addition, these parties dispute Ameritech's contention that the *Joint Cost Order* renders sales agency programs superfluous. These parties claim that the commissions paid in sales agency programs are necessary to ensure proper allocation of the costs of BOC joint marketing operations for CPE and network services. IDCMA also asserts that, in focusing only on the "benchmark" function of sales agency commissions, Ameritech ignores the other valuable benefits that this Commission has attributed to sales agency programs. NATA states that sales agency programs promote competition by enabling unaffiliated sales agents to provide alternative sources of integrated CPE/network services packages.

36. NATA also disputes Pactel's claim that the ability of CPE vendors to order network services on behalf of their customers renders a sales agency requirement unnecessary. According to NATA, prior to the *BOC CPE Relief Order*, BOC CPE affiliates could similarly order network services on behalf of their customers in the same manner as independent CPE vendors, yet the BOCs argued strenuously that this was insufficient to allow them to compete effectively with integrated providers such as AT&T and IBM-Rolm-MCI, or to respond efficiently to customer demands for customized or integrated network/CPE solutions. Finally, NATA also disputes PacTel's contention that independent sales agents do not generally serve residential and small business telecommunications users.

2. Discussion

37. We retain the joint marketing requirement established in the *BOC CPE Relief Order*. We are not persuaded by the Ameritech argument that the *Joint Cost Order* has rendered sales agency programs superfluous. We believe the joint marketing requirement will generate important benefits. As we stated in the *BOC CPE Relief Order*, these benefits include: (1) creating an opportunity for independent CPE vendors to provide customers with an integrated network services/CPE package; (2) providing competition for BOC integrated network services/CPE operations; and (3) expanding the universe of customers to whom integrated service offerings would be available. [67]

38. Similarly, PacTel's arguments in support of Ameritech's petition are not compelling. As NATA observes in its comments, the BOCs stressed the importance of unseparated marketing when they asked us in an earlier phase of this proceeding to lift the separate subsidiary requirement for CPE. [68] We find unpersuasive PacTel's current arguments to the contrary. We believe that the public will benefit from promotion of additional sources of "one-stop shopping" for integrated service offerings that include CPE. The joint marketing requirement, as implemented through sales agency programs or other functionally equivalent means, furthers this goal. Indeed, while we agree with PacTel that some PBX offerings of independent vendors compete with the BOCs' Centrex service, such PBX offerings may not be components of the efficient integrated offerings that could most benefit customers. Moreover, even if we were to accept PacTel's argument that sales agents primarily serve large telecommunications users, PacTel does not convincingly demonstrate that the use of sales agents does not expand the universe of customers to whom integrated marketing is available. In short, neither Ameritech nor PacTel presents a strong case for eliminating the joint marketing requirement. Accordingly, we deny Ameritech's petition for reconsideration of this requirement.

E. COGs for GTE

39. In the *BOC CPE Relief Order*, we declined to impose any nonstructural safeguards on the provision of CPE by the independent telephone companies (ITCs). [69]

1. Positions of the Parties

40. NATA seeks reconsideration of our decision to refrain from requiring GTE to establish COGs. NATA contends that our decision was based on an incorrect legal standard. It states that the assumption that GTE operates in predominantly suburban and rural areas that contained fewer major business customers is a major premise for our finding that GTE does not have the same potential ability to engage in anticompetitive abuse as a BOC. NATA argues that the opinion in *Illinois Bell v. FCC* [70] criticized that premise.

41. In addition, NATA claims that GTE has a history of attempting to impede the interconnection of CPE provided by its competitors. [71] NATA describes several recent difficulties that CPE vendors have had in ordering local exchange services from GTE on behalf of their customers. [72] NATA contends that GTE is discriminating because these difficulties do not exist for GTE's own CPE marketers, [73] and it urges this Commission to impose COGs and various additional service order processing procedures on GTE's CPE operations. [74]

42. GTE opposes the imposition of a COG requirement on its CPE operations. It contends that the passages cited by NATA from *Illinois Bell v. FCC* were *dicta* that should not be given as much weight as the decision of the U.S. District Court for the District of Columbia in *United States v. GTE Corporation*, [75] which found that differences between GTE and the BOCs justified different treatment between those entities. [76] GTE states that the *BOC CPE Relief Order* specifically addressed and rejected NATA's proposal to impose a COG requirement on all ITCs, including GTE.

43. GTE characterizes NATA's factual allegations as examples of isolated problems with the quality of GTE's local exchange service, not instances of discrimination that would warrant the imposition of COGs on GTE. [77] It asserts that despite NATA's allegations, no complaints have been filed with this Commission about GTE practices with respect to independent CPE vendors and NATA has not shown that any CPE vendor has suffered actual harm by any of the episodes that NATA discusses. [78]

2. Discussion

44. We deny NATA's request to reconsider our decision to refrain from imposing a COG requirement on GTE. As an initial matter, we find unpersuasive NATA's legal challenge to our analysis distinguishing GTE from the BOCs. The passages in *Illinois Bell v. FCC* that NATA cites for authority in attempting to equate GTE and the BOCs for purposes of imposing COGs are *dicta*. That decision focused on the propriety of this Commission's imposition of structural separation requirements on the BOCs, not on whether any such requirements should be imposed on GTE. Indeed, in that decision, the court rejected an argument advanced by the BOCs that our decision to impose such requirements on them, but not on GTE, was unlawfully discriminatory. Furthermore, we now have more than three years of additional experience with the operations of the industry since we extended the structural separation requirements to the BOCs. As we explained in the *BOC CPE Relief Order*, our decisions both to remove those requirements from the BOCs and to decline to extend the new nonstructural safeguards to the ITCs, including GTE, are based on our analysis of developments in the industry and our evaluation of the regulatory structure that will best promote the efficient operation of telecommunications markets and ensure the widespread availability of high quality products and services at reasonable prices.

45. We also find that the record does not provide any support for NATA's claim that GTE is discriminating against independent CPE vendors. While NATA's examples of delayed order processing and other apparent impediments to obtaining GTE local exchange service by CPE vendors cause us concern, the record does not indicate that GTE is providing any better service to customers that possess its CPE. Thus, while GTE does not dispute the service order problems that NATA discusses, we find NATA has not demonstrated that such problems constitute anticompetitive behavior by GTE against its CPE competitors. The problems discussed by NATA are quite limited in number, and we find it significant that no one has filed formal or informal complaints with this Commission alleging that GTE has discriminated in its provision of network services to non-affiliated CPE vendors or their customers. In light of the inconclusive showing that GTE is engaging in discriminatory conduct, we affirm our conclusion in the *BOC CPE Relief Order* that, for the reasons stated there, our imposition of a COG requirement on GTE would be unnecessarily burdensome.[79] We believe that GTE's obligation to abide by the provisions of Section 202 of the Communications Act and the existing procedures to enforce that obligation are sufficient to ensure that GTE does not engage in any unjust or unreasonable discrimination.

IV. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED, that pursuant to 47 U.S.C. " 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. ' 553, the Petitions for Reconsideration filed in this proceeding ARE DENIED, except as provided herein.

47. IT IS FURTHER ORDERED, that the motion for leave to file supplement to petition filed by NATA IS GRANTED.

48. IT IS FURTHER ORDERED, that the motions for leave file in excess of page limitation filed by NATA and GTE ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

PARTIES FILING PETITIONS

1. Ameritech Operating Companies (Ameritech)
2. International Communications Association (ICA)
3. North American Telecommunications Association (NATA)

PARTIES FILING RESPONSES

1. American Petroleum Institute (API)
2. Ameritech
3. Bell Atlantic Telephone Companies (Bell Atlantic)
4. BellSouth Corporation, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (BellSouth)
5. GTE Service Corporation (GTE)
6. Independent Data Communications Manufacturers Association, Inc. (IDCMA)
7. ICA
8. NATA
9. New York Telephone Company and New England Telephone and Telegraph Company (NYNEX)
10. Pacific Bell, Nevada Bell, PacTel Communications Companies, and Pacific Telesis Group (PacTel)
11. Southwestern Bell Corporation (Southwestern Bell)
12. Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West)

PARTIES FILING REPLIES

1. Ameritech
2. ICA
3. NATA
4. Southwestern Bell

PARTY FILING SUPPLEMENTAL PETITION

1. NATA

PARTY FILING SUPPLEMENTAL RESPONSE

1. GTE

PARTY FILING SUPPLEMENTAL REPLY

1. NATA

FOOTNOTES

[1] Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, *Report and Order*, 2 FCC Rcd 143 (1987).

[2] Second Computer Inquiry, *Final Decision*, 77 FCC 2d 384, *modified on reconsideration*, 84 FCC 2d 50 (1980), *further modified on reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n v FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff' d on second further reconsideration*, FCC No. 84-190 (released May, 1984).

[3] Hereinafter, we refer to a petition for reconsideration as a "petition", a pleading filed in response or opposition to a petition as "response", and a pleading filed in reply to a response as a "reply." Parties filing petitions, responses, and replies are listed in Appendix A. We use the abbreviations listed in that Appendix throughout this Order. In the course of this proceeding, NATA filed a Motion for Leave to File Supplement to Petition on Aug. 14, 1987, and a Motion for Leave to File in Excess of Page Limitation on April 15, 1987. GTE filed a Motion for Leave to File Opposition in Excess of Page Limitation on March 26, 1987. No party opposed these motions. Since we find that no party would be prejudiced by our granting of these motions, we grant them.

[4] *Final Decision*, 77 FCC 2d at 439, para. 141.

[5] We refer to this safeguard as "the structural separation requirements".

[6] *See* Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies, 95 FCC 2d 1117 (1984), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984), *aff'd on reconsideration*, FCC No. 84-252, 49 Fed. Reg. 26056 (1984), *aff'd sub nom. North American Telecommunications Assoc. v. FCC*, 772 F.2d 1282 (7th Cir. 1985).

[7] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987), *aff'd on reconsideration*, 2 FCC Rcd 6283 (1987)(*Joint Cost Order*). The apportionment procedures that were established in the *Joint Cost Order* are not limited to BOC provision of CPE and enhanced services.

[8] The "make/buy" point occurs when the BOC makes a decision to manufacture itself or to procure from an unaffiliated entity any product the design of which affects or relies on the network interface.

[9] The make/buy point generally occurs before the twelve month public disclosure point.

[10] *See* Ameritech Petition at 7-8; *see also* NYNEX Response at 3.

[11] Ameritech Petition at 7; *see also* PacTel Response at 5.

[12] Ameritech Petition at 8; *see also* NYNEX Response at 3 n. 5; PacTel Response at 5-6; US West Response at 2.

[13] US West Response at 2-3.

[14] IDCMA Response at 10; NATA Reply at 10.

[15] IDCMA Response at 9.

[16] *Id.* at 10.

[17] *See BOC CPE Relief Order*, 2 FCC Rcd at 169, n. 132.

[18] *See* ICA Petition at 3-5; *see also* API Response at 3.

[19] The parties refer to this as a "prior authorization" proposal.

[20] It asserts, moreover, that the CPNI possessed by the BOCs is more extensive and raises greater confidentiality concerns than that possessed by AT&T.

[21] By contrast, ICA asserts that AT&T only has access to service and customer usage information regarding its own interexchange services, which for most business users represents a relatively small share of their total traffic load and usually is of significantly less importance in determining the nature, size, and features of CPE. ICA Petition at 5; ICA Reply at 4.

[22] ICA Petition at 5.

[23] *Id.* at 6; ICA Reply at 2.

[24] *See* API Response at 3-5; IDCMA Response at 14.

[25] ICA Reply at 6.

[26] *Id.* at 4; *see also* API Response at 3-4.

[27] ICA Reply at 4-5. ICA claims, moreover, that access to such information can be used to estimate a customer's prospective use of modems, front end processors, concentrators, local area networks, and other data communicationsequipment. *Id.* at 5.

[28] Ameritech Response at 2; NYNEX Response at 3.

[29] Ameritech Response at 2; BellSouth Response at 3; Southwestern Bell Response at 3.

[30] Ameritech Response at 3; BellSouth Response at 3; Southwestern Bell Response at 3.

[31] BellSouth Response at 2.

[32] BellSouth *ex parte* presentation, July 7, 1987. BellSouth also reiterates three arguments that it made in its pleadings prior to adoption of the *BOC CPE Relief Order*. First, it argues that it is unlikely that BellSouth will be able to identify potential CPE customers using the CPNI in its possession because 87% of new business customers already have chosen their CPE by the time they order service. Second, BellSouth claims that AT&T's CPNI is more valuable because AT&T has information on the 70 million customers who owned or leased the embedded CPE that AT&T obtained at divestiture, as well as information on interLATA switched traffic and interLATA private line configurations. Third, according to BellSouth, other information relating to the nature and scope of the customer's business is more valuable than CPNI in marketing CPE and this type of information is available to all CPE vendors. *Id.*

[33] Those customers who feel to the contrary are free to prohibit the BOC joint marketing or CPE personnel from obtaining access to their CPNI.

[34] In contrast, the prior authorization approach would result in the imposition of a limited, but significant, form of structural separation between a BOC's CPE and its network services operations pending a customer's CPNI authorization. We found in the *BOC CPE Relief Order* that, while the structural separation rules were preventing discrimination and cross-subsidization, they were doing so by denying customers the efficiencies and other benefits that an integrated CPE/network service operations can provide. On balance we found that other regulatory tools (*i.e.* the nonstructural safeguards we adopted) could achieve the same level of protection from anticompetitive activity while permitting the benefits of integrated operations to be realized.

[35] In the *BOC CPE Relief Order*, we stated that the CPNI of large telecommunications users is the most valuable for CPE sales. *BOC CPE Relief Order*, 102 FCC Rcd at 153, para. 68. We found that the marketing advantage conferred by BOC access to such CPNI is substantially mitigated by the sophistication of these customers, who generally solicit bids from several CPE vendors before they make any purchase. Thus, we found it likely that an initial CPE solicitation to a large customer generally would not lead to an immediate sale, but would more often result in the customer contacting other CPE vendors to receive competing offers. Moreover, while smaller customers may not be as sophisticated in their telecommunications purchases, in most cases their CPNI will be less valuable to CPE vendors. Furthermore, the

CPE market has developed to the point that even most smaller customers are aware that the BOCs are not the only, or even principal, source of CPE.

[36] For example, the annual notification that users receive reminds them of their right to require the BOC to disseminate their CPNI (i) only to network services personnel within the BOC or (ii) to competing CPE vendors. In contrast, prior to the structural separation requirements of *Computer II*, which included restrictions on the use of CPNI by a carrier's CPE subsidiary, there were no federal restrictions on the BOCs' use of CPNI in their marketing of CPE. Moreover, currently there are no such restrictions applicable to the ITCs, which serve about twenty percent of the customers in the country and which frequently sell CPE together with local network services.

[37] This safeguard was later also adopted for the unseparated enhanced service operations of both AT&T and the BOCs.

[38] Our CPNI decision applies to BOC provision of CPE only; reconsideration petitions of our treatment of CPNI for enhanced services in the *Computer III Phase II Order* are pending. *See* 2 FCC Rcd 3076, 3094-98, paras. 152-76.

[39] *See supra* para. 17.

[40] *See e.g.*, Bell Atlantic Compliance Plan at 3-4.

[41] Ameritech Petition at 9; BellSouth Response at 4; NYNEX Response at 4; PacTel Response at 6; Southwestern Bell Response at 5-6; Bell Atlantic Compliance Plan at 3; *see* US West Compliance Plan at 11.

[42] Ameritech Petition at 10; BellSouth Response at 2-4; NYNEX Response at 5; Southwestern Bell Response at 4-6; Ameritech Reply at 12; *see also* Bell Atlantic Compliance Plan at 3; US West Compliance Plan at 11.

[43] BellSouth Response at 3; PacTel Response at 6.

[44] Ameritech Petition at 10; NYNEX Response at 5; PacTel Response at 6.

[45] Southwestern Bell Response at 7; Southwestern Bell Reply at 4. To address this problem, Southwestern Bell proposes in the alternative that, if this Commission retains maintenance reports, it should allow the BOCs to file the reports less frequently than on a quarterly basis and/or to provide fewer service categories than was required for AT&T's maintenance reports. Southwestern Bell Response at 8 n. 18. In addition, BellSouth claims that disaggregation of maintenance service categories is more costly than is the disaggregation of installation service categories. BellSouth *ex parte* presentation of July 8, 1987.

[46] Ameritech Petition at 11.

[47] Southwestern Bell Reply at 4.

[48] Ameritech Petition at 10; BeliSouth Response at 4; Southwestern Bell Response at 7; Southwestern Bell Reply at 3-4.

[49] Ameritech Petition at 9; BellSouth Response at 4; NYNEX Response at 4; Ameritech Reply at 12.

[50] American Information Technologies Corp., *Memorandum Opinion and Order*, FCC No. 85-582 (released Nov. 15, 1985) at para. 30.

[51] In place of the eliminated installation and maintenance reporting requirement, the Commission relied on the existence of COG reports. However, COGs, and COG reports, only deal with installation.

[52] Ameritech Petition at 11; BellSouth Response at 1-2; NYNEX Response at 5; PacTel Response at 6; Ameritech Reply at 11.

[53] BellSouth *ex parte* presentation of July 7, 1987; *see also* BellSouth Response at 2; Ameritech Reply at 11. The BOCs argue, moreover, that their maintenance employees are advised that they will be disciplined if they discriminate. *See* , *e.g*, BellSouth *ex parte* presentation of July 7, 1987.

[54] IDCMA Response at 12.

[55] IDCMA *ex parte* presentation of June 15, 1987.

[56] IDCMA Response at 11-12.

[57] *Id.* at 13.

[58] In contrast to the maintenance situation, we continue our requirement that the BOCs file quarterly installation reports because it is likely that integrated BOC CPE marketing/installation personnel will be aware of the identity of the customer's CPE vendor. We note that the installation of network services typically occurs shortly after the sale of the CPE and at approximately the same time as CPE installation. Moreover, the independent CPE vendor community historically has evidenced greater sensitivity to possible discrimination in installation than in maintainence. Indeed, the COG requirement initially was established as the result of an antitrust litigation between independent CPE vendors and the BOCs. *See Jarvis v. AT & T*, C.A. No. 74-1674 (D.D.C. 1980). As indicated earlier, COGs deal with installation and not with maintenance.

[59] The record further indicates that for purposes of preparing comparative reports, it is easier to identify the CPE vendor for installation than for maintenance.

[60] For example, if a BOC's CPE marketing personnel were to promise or provide superior network service maintenance to prospective CPE customers, we would expect such a practice to become known to the BOC's competitors and a subject to our complaint process. We emphasize that such representations, even if untrue, would be improper. We expect the BOCs to take whatever steps are necessary to ensure that their marketing personnel do not make such representations or take such actions and that they otherwise conform their activities to the Communications Act and to the standards we have established in this proceeding for the unseparated provision of CPE and network services by the BOCs. *See AT & T Structural Relief Order*, 102 FCC 2d at 691, para. 60.

[61] We note that the record in response to the *BOC CPE Relief Notice* did not focus on these factors.

[62] We recognize, however, the possibility that some BOCs may already have begun implementing their maintenance reporting plans. Thus, we permit the BOCs the option of filing the maintenance reports as specified in the *BOC CPE Relief Order*. We require the BOCs to file with this Commission a letter stating which option they will choose by December 28, 1987. If a BOC elects to file quarterly maintenance reports, we will evaluate the BOC's reporting procedures contained in its nondiscrimination compliance plan.

[63] The affidavit should cross-reference the relevant portions of the BOC's nondiscriminationcompliance filings, such as the compliance plan it has already filed in this proceeding and any amendments thereto.

[64] If a BOC's affidavit should prove to be false, we will impose appropriate sanctions.

[65] Ameritech Petition at 2. Ameritech contends, however, that it has no intention of eliminating its sales agency program at this time.

[66] PacTel Response at 2.

[67] *BOC CPE Relief Order*, 2 FCC Rcd at 156, para. 92.

[68] *See* , *e.g.*, PacTel Comments to the *BOC CPE Relief Notice* at 3-4.

[69] *See BOC CPE* Relief Order, 2 FCC Rcd at 157-58, paras.103-109.

[70] NATA Petition at 4-6, citing Illinois Bell Telephone Company v. FCC, 740 F.2d 465, 476 (7th Cir. 1984). According to NATA, that decision also rejected our determination that national or regional concentration of bottleneck facilities was the source of BOC power. NATA Petition at 6-7, citing Illinois Bell at 473.

[71] NATA Petition at 8.

[72] According to NATA, such instances include missed due dates, delayed order processing, the lack of coordination between the CPE vendor and GTE's plant and installation departments, the absence of a procedure to obtain expedited service (an escalation procedure), and the moving of account executives for GTE of Florida's major customers to its CPE affiliate without notifying CPE vendors. NATA Petition at 8-13, Attachment B, Attachment C, Attachment D, Attachment E; NATA Reply at 5-12; NATA Supplemental Petition at 1-5; NATA Supplemental Reply at 1-6; NATA ex p art e letter of Oct. 20, 1987.

[73] NATA Reply at 8-10, 15.

[74] NATA Petition at 13-18; NATA Reply at 12-14; NATA ex parte letter of Oct. 20, 1987.

[75] 603 F.Supp. 730 (D.D.C. 1984).

[76] GTE Response at 28-30.

[77] Id. at 10-13, 22-26. GTE asserts that it is the stated policy and practice of GTE to process network service orders on an impartial basis and that in no case are due dates for such orders based on whether a GTE vendor or non-GTE vendor has placed the order. GTE ex parte letter of Oct. 5, 1987. GTE contends that the service order problems cited by NATA are a miniscule proportion of GTE's volume of transactions with CPE vendors. It claims that these incidents do not demonstrate that there is a pattern of inadequate service provided by GTE. GTE Response at 27-28. It also argues that, contrary to NATA's assertion, GTE has escalation procedures in place. Id. at 13-17. In addition, GTE acknowledges that it has reorganized its sales force in Florida, but it maintains that it left in place mechanisms designed to allow competing vendors to obtain network services from employees of GTE's regulated operations. GTE Supplemental Response at 1-3. Moreover, it states that in California, the locus of all of NATA's specific examples of alleged discrimination,it has a Vendor Order Processing Center (VOPC) in place that, like COGs, facilitates network service order processing for CPE vendors. GTE Response at 21. It maintains that the VOPC is available to, and is used by, all area CPE vendors, including GTE's CPE marketers. GTE ex parte letter of April 24, 1987. GTE states that network services for non-GTE CPE customers can also be ordered through GTE business service order centers and repair centers used by GTE CPE vendors and that there are no differences in due dates between those offices and the VOPC. GTE ex parte letter of Oct. 5, 1987.

[78] GTE Response at 6-10; GTE Supplemental Response at 1.

[79] As stated in the BOC CPE Relief Order, however, we have not preempted the states from imposing nonstructural safeguards on the ITCs that are no more stringent than those we impose on the BOCs. *See* BOC CPE Relief Order, 2 FCC Rcd at 161, para. 129.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of .

MOBILFONE SERVICE, INC. File No. I-T-D-87-009

Application for authority to discontinue service at Maritime Mobile Public Coast II-B Station KLG-376 in South Padre Island, Texas

ORDER AND AUTHORIZATION

Adopted: December 24, 1987; Released: January 7, 1988

By the Acting Chief, International Facilities Division:

1. The Commission has before it an application, filed on June 11, 1987 and supplemented on November 13, 1987, by Mobilfone Service, Inc. (MSI), for authority pursuant to Section 214 of the Communications Act of 1934 to discontinue service from its Class III-B Public Coast radio station KLG-376 located in South Padre Island, Texas. The station principally serves the leisure marine interests around South Padre Island, Texas. The marine area served is the south eastern shore of Texas in the Gulf of Mexico, particularly the Brazas Santiago Pass, the Laguna Madre and the Intercoastal Waterway.

2. The basic statutory test to be applied by this Commission in considering applications for discontinuance of common carrier service to a community is found in Section 214(a) of the Act. Under this Section, the Commission may permit discontinuance of service upon a finding that "neither the present nor future public convenience and necessity will be adversely affected" by the proposed action. Application of this standard presents the Commission with a task of balancing the financial burden that would be imposed on the carrier by continued operation of its facilities with the needs and interests of the user community.[1]

3. In support of its application, MSI states that the small amount of traffic has led to the decision to close the facility. MSI has submitted figures showing that very little traffic has been transmitted via that station. For example, during the period from September 24, 1987 through October 31, 1987 only 11 calls totaling 32 minutes of use were reported with a total revenue of $73.60. MSI's monthly operating expenses are $2,502.90. Not one emergency message has been received by the station during the past year. MSI states that the proposed discontinuance will not adversely affect the public convenience and necessity since alternative means of communications are available via MSI's high frequency facilities that provide adequate service in the affected area.

4. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that neither the present nor future public convenience and necessity will be adversely affected by the discontinuance of service via the instant station.

5. Accordingly, IT IS ORDERED that application File No. I-T-D-87-009 IS GRANTED, and MSI is authorized to discontinue service via its Maritime Mobile Public Coast III-B station KLG-376 at South Padre Island, Texas.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] Public Coast Radiotelegraph Stations, 67 FCC 2d 790 at 795 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LONG DISTANCE SERVICE OF WASHINGTON, INC.

File No. I-T-C-88-017

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 24, 1987; Released: January 7, 1988

By the Acting Chief, International Facilities Division:

1. We have before us for consideration an application, filed on October 28, 1987 by Long Distance Service of Washington, Inc. (LDSW), requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on November 11, 1987. No comments were received.

2. Upon review of the application, we find that the applicant has the legal, technical and financial qualifications to provide the proposed services. LDSW, a Delaware corporation, is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other carriers already providing such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by LDSW.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-87-017 IS GRANTED and LDSW is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs FCC Nos. 1 and 2, MCI International Telecommunications Corp.'s Tariff FCC No. 1, US Sprint's Tariffs FCC Nos. 1 and 2, and FTCC's Tariff FCC No. 23, between the U.S., Hawaii, Puerto Rico and the Virgin Islands, on the one hand, and Canada and Mexico and those points listed in those tariffs on the other hand.

5. Copies of any operating agreements entered into between LDSW and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that LDSW shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN LONG LINES — File No. I-T-C-87-170

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 24, 1987 **Released: January 7, 1988**

By the Acting Chief, International Facilities Division:

1. We have before us for consideration an application, filed on August 28, 1987 by American Long Lines (ALL) and supplemented by letter of December 7, 1987, requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on September 9, 1987. No comments were received.

2. Upon review of the application, we find that the applicant has the legal, technical and financial qualifications to provide the proposed services. ALL, a Pennsylvania corporation, is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other carriers already providing such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by ALL.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-87-170 IS GRANTED and ALL is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff FCC No. 1, MCI Tariff FCC No. 2 and US Sprint's Tariff FCC Nos. 1 and 2, between the U.S., Hawaii, Puerto Rico and the Virgin Islands, on the one hand, and Canada and Mexico and those points listed in those tariffs on the other hand.

5. Copies of any operating agreements entered into between ALL and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that ALL shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ITT WORLD COMMUNICATIONS, INC. File No. I-T-C-88-012

Application for authority to provide direct service between the U.S. and Burma

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 24, 1987; Released: January 7, 1988

By the Acting Chief, International Facilities Division:

1. The captioned uncontested application, filed on October 23, 1987 by ITT World Communications, Inc. (ITT), requests authority to acquire and operate facilities to provide direct service between the U.S. and Burma. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Burma by ITT.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-012 IS GRANTED, and ITT is authorized to:

a. utilize for service to Burma one 50-baud circuit derived from previously authorized cable and connecting facilities between ITT's San Francisco, California operating office and Singapore;

b. lease and operate one 50-baud satellite circuit between the earth station in Singapore and an appropriate satellite over the Indian Ocean, connecting with similar facilities between the satellite and an earth station in Burma, furnished by ITT's correspondent in Burma; and

c. use said facilities to provide ITT's regularly authorized services between the U.S. and Burma and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between ITT and its correspondent in Burma, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-88-023

Application for authority to lease and operate satellite circuits for service to Europe, the Middle East and Africa

ORDER AND AUTHORIZATION

Adopted: December 24, 1987; Released: January 7, 1988

By the Acting Chief, International Facilities Division:

1. The captioned uncontested application, filed on November 4, 1987 by American Telephone and Telegraph Company (AT&T), requests authority for continuation of authority expiring on December 31, 1987 to acquire and operate satelite circuits for service to points in Europe, the Middle East and Africa which are not members of CEPT (the conference of 26 European Post/Telecommunications Administrations). AT&T states that traffic demands are such that no additional circuits will be necessary in 1988.[1] The Commission's Order and Authorization released December 31, 1986 (File No. I-T-C-87-010) extended AT&T's authority which will expire on December 31, 1987. Upon consideration of the application, we find that authorization of the requested facilities and services is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-023 IS GRANTED, and AT&T's authority to acquire and operate satellite facilities for service to Europe, the Middle East and Africa (non-CEPT points) is extended until December 31, 1988.

3. All other terms and conditions of the Commission's Order and Authorization released December 7, 1982, File No. I-P-C-82-045, remain the same.

4. The Commission's order cited in paragraph 1 above, IS HEREBY SUPERSEDED.

5. AT&T shall file an application for satellite circuits for service to Europe, the Middle East and Africa on or before November 1, 1988.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] The Commission's Order and Authorization released December 7, 1982 (File No. I-P-C-82-045) granted AT&T authority to lease and operate satellite circuits to non-CEPT countries for 1983, 1984, and 1985. This order was extended in 1985 and again in 1986.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT INTERNATIONAL, INC. File No. I-T-C-88-019

Application for authority to acquire and operate facilities for service to France

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 24, 1987; Released: January 7, 1988

By the Acting Chief, International Facilities Division:

1. The captioned uncontested application, filed on October 28, 1987 by TRT International, Inc. (TRTI), requests authority to lease and operate satellite and connecting facilities for provision of service between the U.S. and France and beyond. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of City direct service to France by TRTI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-019 IS GRANTED, and TRTI is authorized to:

a. lease from Comsat and operate one 256 Kbps circuit between an earth station at Staten Island, New York and an appropriate earth station over the Atlantic Ocean connecting with similar facilities between the satellite and an earth station in France furnished by TRTI's correspondent in France;

b. lease and operate any necessary connecting facilities in the U.S.; and

c. use said facilities in conjunction with previously authorized facilities in the Staten Island earth station, to provide TRTI's regularly aauthorized services between the U.S. and France and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between TRTI and its correspondent in France, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GRAPHNET, INC. File No. I-T-C-88-030

Application for authority to
acquire and operate facilities
for service to South Korea

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 24, 1987; Released: January 7, 1988

By the Acting Chief, International Facilities Division:

1. The captioned uncontested application, filed on November 13, 1987 by Graphnet, Inc. (Graphnet), requests authority to lease and operate facilities for direct service to South Korea. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to South Korea by Graphnet, Inc.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-030 IS GRANTED, and Graphnet, Inc. is authorized to:

a. lease and operate 24 telegraph circuits in bearer facilities between the U.S. and South Korea;

b. lease and operate necessary connecting facilities in the U.S.; and

c. use said facilities to provide Graphnet, Inc.'s regularly authorized services between the U.S. and South Korea and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between Graphnet, Inc. and its correspondent in South Korea, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities
Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-557

In re Applications

A. J. T. BROADCASTING SERVICES LIMITED PARTNERSHIP (hereafter AJT)	File No. BPH-850712QK
BLUE MOUNTAIN BROADCASTING COMPANY (hereafter Blue Mountain)	File No. BPH-850712QL
CAROL M. HODGINS (hereafter Hodgins)	File No. BPH-850712RJ
NON-PROFIT CONCEPTS INC. (hereafter Non-Profit)	File No. BPH-850712QH (DISMISSED)

For a Construction Permit
For a New FM Station on
Channel 261A in LaGrande, Oregon

ERRATUM

Released: January 8, 1988

The Hearing Designation Order in the above captioned proceeding (DA 87-1798), released December 29, 1987, is corrected to show the date in paragraph 11 should be January 21, 1988 in lieu of January 21, 1987.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-569

In re Applications of

BLUE RIDGE BROADCASTING CO., INC. (hereafter BRBI)	File No. BPH-861125MH
PETER WAYNE LECHMAN (hereafter Lechman)	File No. BPH-861126ND

For a Construction Permit
For a New FM Station on
Channel 294A in Churchville, Virginia

HEARING DESIGNATION ORDER

Adopted: December 10, 1987; Released: January 7, 1987

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *BRBI.* In response to Section VI of FCC Form 301, BRBI has indicated that it will employ five or more full-time employees. Therefore, BRBI is required to submit the five-point Model Equal Employment Opportunity (EEO) Program (FCC Form 396A). The guidelines to the Model (EEO) Program, paragraph IV, instruct the applicant to specify the recruitment sources that it proposes to use in recruiting minority and female employees. BRBI has not provided these specific recruitment sources in its EEO program. Accordingly, BRBI shall amend its application, within 30 days of the release of this Order, by submitting specific sources of minority and female recruitment to the presiding Administrative Law Judge.

3. The applicants below have petitioned for leave to amend their applications on the dates shown below. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
BRBI	October 1, 1987 (Engineering)
Lechman	November 19, 1987

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That pursuant to paragraph IV (recruitment) of the applicant's Model EEO Program, BRBI shall file with the presiding Administrative Law Judge, within 30 days of the release of this Order, data providing the minority and female recruitment sources that it proposes to utilize in filling job vacancies.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: BRBI, Lechman.

8. IT IS FURTHER ORDERED, That, in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D. C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **January 28, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed therein, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-567

In re Applications of

GEORGE HENRY CLAY (hereafter Clay)	File No. BPH-870327KB
LIGHTHOUSE FM LIMITED PARTNERSHIP (hereafter Lighthouse)	File No. BPH-870330MG
G. DEAN PEARCE (hereafter Pearce)	File No. BPH-870330MY
PRIMEMEDIA BROADCASTING, INC. (hereafter Prime)	File No. BPH-870331MB
ALABAMA RADIO MOVEMENT, INC. (hereafter Movement)	File No. BPH-870331ML
CCI - FM, LTD. (hereafter CCI)	File No. BPH-870331MN
BENJAMIN MACWAN (hereafter Macwan)	File No. BPH-870331NP
ALVIN C. DIXON, JR. (hereafter Dixon)	File No. BPH-870331OL
CONFEDERATE BROADCASTING, INC. (hereafter Confederate)	File No. BPH-870331OO
JOHNNIE F. KNIGHT (hereafter Knight)	File No. BPH-870414KG
MONTGOMERY BROADCAST PROPERTIES, LTD. (hereafter Properties)	File No. BPH-870415KO
JCT BROADCASTING LIMITED PARTNERSHIP (hereafter JCT)	File No. BPH-870415MB
MONTGOMERY RADIO JOINT VENTURE (hereafter MRJV)	File No. BPH-870415MH
LINDA BRELAND VALESKA D/B/A BRELAND BROADCASTING (hereafter Breland)	File No. BPH-870415MI
JUNE N. PHELPS (hereafter Phelps)	File No. BPH-870415MM
DOUBLE LS BROADCASTING INC. (hereafter Double)	File No. BPH-870415MN
MONTGOMERY BROADCAST ASSOCIATES, INC. (hereafter Associates)	File No. BPH-870415MP
MONTGOMERY BROADCASTING CORPORATION (hereafter MBC)	File No. BPH-870415MQ
WHITE BROADCASTING NETWORK, INC. (hereafter White)	File No. BPH-870415MR

For Construction Permit for a New FM station on Channel 241A (96.1 MHz) in Montgomery, Alabama

HEARING DESIGNATION ORDER

Adopted: December 9, 1987; Released: January 7, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Preliminary matters.* All of the applications filed in the above- captioned proceeding failed to propose full coverage of the area within the city boundaries of Montgomery as required by the city coverage rule, 47 C.F.R. § 73.315. Some of the applicants' proposals allege substantial compliance of the rule.[2] Other applicants requested waiver of the city coverage rule based on arguments of technical impossibility. However, the city boundaries used by the applicants were non-uniform. In order to properly evaluate the proposals of each applicant, the staff must be assured that the applicants are basing their computations on a set of city boundaries which have been fixed at some particular point. This enables the staff to examine the

applications from a standardized frame of reference. Accordingly, an appro- priate city coverage issue will be specified as to all applicants. All waiver requests with respect to the city coverage rule will be addressed by the presiding Administrative Law Judge post-designation.

3. Several applications were, at the time of their tender, slightly short- spaced to the then licensed facilities of WBIL-FM, Tuskegee, Alabama, which had pending an application (File No. BLH-861231KA) for a license to cover the relocation of its antenna to a more distant site, thus eliminating the Montgomery applicants' short-spacing problem. The licensee of WBIL-FM had commenced operation on Program Test Authority from the new site on or about December 21, 1986. The license application was granted on May 5, 1987, approximately one month subsequent to the filing of the applications for the Montgomery allotment. Because WBIL-FM was operating at the new site prior to the opening of Montgomery filing window, we will disregard any short-spacing in this instance and will dismiss any requests for waiver of 47 C.F.R. § 73.207 as moot.

4. *Clay*. In his response to Section II, Item 7 of FCC Form 301 (1986 ed.), Clay reported that he owns an attributable interest in All Channel TV Services, Inc., licensee of WBIL-AM, Tuskegee, Alabama, and in New World Communications, Inc., licensee of WBIL-FM, Tuskegee, Alabama. He pledged to divest himself of his interest in these stations and to terminate his employment or any other relationship therewith prior to grant of the proposed Montgomery station. A condition reflecting this commitment will be specified below.

5. *Movement*. In response to Section V-B, Item 6 of FCC Form 301 (1985 ed.), Movement stated that the height of its antenna above average terrain (HAAT) is 85 meters. This figure was repeated in the headings for the applicant's Exhibits Nos. 1 through 6. However, engineering study has revealed that the average of the eight radials in response to Item 15 of Section V-B (which apparently was taken from the applicant's Exhibit No. 4) is 100 meters. The applicant's heading for Exhibit C listed this 100 meter figure. However, using the applicant's average elevation for the site and the 145.7 meter value for the height of antenna radiation center above mean sea level, we can confidently and reliably determine the proper HAAT value to be 85.2 meters. Additionally, the improper data that was entered into Item 15 for the eight radials was used by the applicant to find the distance to the 1 mV/m and 3.16 mV/m contours required by that Item. Accordingly, these data and the contour map must be amended. These items do not affect the acceptability of Movement's application, as the HAAT and contour problems did not cause the application to violate any rule section. Movement will be required to submit new data in response to Item 15, Section V-B, and a new contour map as an amendment to its application to the presiding Administra- tive Law Judge within 30 days of the release of this Order.

6. *Confederate*. Confederate provided a negative response to Section III of FCC Form 301, indicating that it is not financially qualified to construct and operate the proposed Montgomery facility. Accordingly, a financial issue will be specified below.

7. *Properties*. Properties failed to complete its response to Section II, Item 4 of FCC Form 301 (1986 ed.), with respect to the extent of the controlling interest held by Allan G. Stroh, General Partner. Accordingly, Properties will be required to submit an amendment containing the missing ownership information to the presiding Administrative Law Judge within 30 days of the release of this Order.

8. Properties reported in its May 27, 1987 amendment that its General Partner, Allan G. Stroh, is employed by stations WHHY-AM/FM, Montgomery, Alabama. He pledged to terminate this employment should Properties be awarded the requested construction permit. A condition reflecting this commitment will be specified below.

9. *Breland*. In her response to Section V-B, Item 19 of FCC Form 301 (1986 ed.), Breland provided incorrect data for the distances of the eight listed radials to the 3.16 mV/m contour. Breland's contour map, however, was accurately drawn and thus the staff was able to determine the correct values. Therefore, the error did not render unacceptable Breland's application, which complies with all of our technical acceptance requirements. Accordingly, Breland will be required to submit corrected radial data as an amendment to her application to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. *Phelps*. In response to Section II, Item 7 of FCC Form 301 (1986 ed.), Phelps reported that she is an employee and vice president of WMGY Radio, Inc., licensee of WMGY(AM), Montgomery, Alabama, and that she will terminate this employment and resign as vice president should her application be granted. A condition reflecting this commitment will be specified below.

11. *Double. In response to Section II, Item 7 of FCC Form 301 (1986 ed.), Double reported that its vice president and stockholder, Tommy Simon, is a programmer for WMGY Radio, Inc., licensee of WMGY(AM), Montgomery, Alabama, and that he will terminate this employment should Double's application be granted. A condition reflecting this commitment will be specified below.*

12. *White*. On July 1, 1987, White submitted an amendment to its application for an engineering change. The amendment was filed subsequent to the amendment as of right period and was not accompanied by a showing of good cause to support acceptance at this time. *See* 47 C.F.R. § 73.3522(a)(6); *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19,936 (May 13, 1985). Accordingly, the amendment will be returned.

13. *Other matters*. In response to Section VI, FCC Form 301, the applicants below have indicated that they will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rule as set forth in FCC Form 396A, the five-point Model EEO Program. The following applicants have submitted EEO programs that are apparently incomplete or otherwise deficient.[3] Accordingly, the following applicants will be required to file amended EEO programs with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANTS	DEFICIENCIES
Properties	Failed to identify specific sources of recruitment specializing in minority candidates.
Phelps	Failed to identify specific sources of recruitment specializing in women candidates;

	failed to identify printed media which have significant circulation or are of particular interest to minorities or women in which it intends to place employment advertisements.
White	Failed to identify specific sources of recruitment specializing in women candidates.

14. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Lighthouse	June 30, 1987
Pearce	July 20, 1987; November 12, 1987
Movement	September 15, 1987
Confederate	August 7, 1987; October 20, 1987
Breland	September 21, 1987

15. Since no determination has been received from the FAA as to whether the antennas proposed by all of the Montgomery applicants would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA will be made a party to the proceeding.

16. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consilidated proceeding on the issues specified below.

17. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposal of each of the applicants would provide coverage of the city sought to be served, as required by Section 73.315(a) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of that section.

2. To determine with respect to Confederate whether, in light of the evidence adduced concerning the deficiency set forth above in this order, Confederate is financially qualified.

3. To determine whether there is a reasonable possibility that the tower heights and locations proposed by each of the applicants would constitute a hazard to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

18. IT IS FURTHER ORDERED, That the requests for waiver of 47 C.F.R. § 73.207 submitted by the following applicants ARE HEREBY DISMISSED AS MOOT: Lighthouse, Prime, Macwan, Dixon, Properties, JCT, Breland, and MBC.

19. IT IS FURTHER ORDERED, That in the event of a grant of the Clay application, the construction permit shall be conditioned as follows:

> Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that it has divested itself of the licenses of and terminated any employment at WBIL-AM/FM, Tuskegee, Alabama.

20. IT IS FURTHER ORDERED, That Movement shall submit an amendment including a contour map as requested hereinabove at paragraph 5 to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. IT IS FURTHER ORDERED, That Properties shall submit the amendment requested hereinabove at paragraph 7 to the presiding Administrative Law Judge within 30 days of the release of this Order.

22. IT IS FURTHER ORDERED, That in the event of a grant of the Properties application, the construction permit shall be conditioned as follows:

> Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that its principal, Allan G. Stroh, has terminated his employment at WHHY-AM/FM, Montgomery, Alabama.

23. IT IS FURTHER ORDERED, That Breland shall submit the amendment requested hereinabove at paragraph 9 to the presiding Administrative Law Judge within 30 days of the release of this Order.

24. IT IS FURTHER ORDERED, That in the event of a grant of the Phelps application, the construction permit shall be conditioned as follows:

> Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that its principal, June N. Phelps, has terminated her employment and has resigned from her position at WMGY(AM), Montgomery, Alabama.

25. IT IS FURTHER ORDERED, That in the event of a grant of the Double application, the construction permit shall be conditioned as follows:

> Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that its principal, Tommy Simon, has terminated his employment at WMGY(AM), Montgomery, Alabama.

26. IT IS FURTHER ORDERED, That White's amendment filed July 1, 1987, IS RETURNED.

27. IT IS FURTHER ORDERED, That in accordance with paragraph 13 hereinabove, the following applicants shall submit to the presiding Administrative Law Judge amendments to their EEO programs within 30 days of the release of this Order: Properties, Phelps, and White.

28. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 14 hereinabove: Lighthouse, Pearce, Movement, Confederate, and Breland.

29. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

30. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

31. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **January 28, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

32. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The application of Clear Channel Communications, Inc. (File No. BPH- 870331NM) was dismissed on November 19, 1987, pursuant to the applicant's request.

[2] The Commission no longer requires waiver of 47 C.F.R. § 73.315(a) when more than 80% of the community of license will be included within the 3.16 mV/m contour. *See John R. Hughes, Inc.* 50 Fed. Reg. 5,679 (Feb. 11, 1985). *See* also Southwest Communications, Inc., released July 16, 1986 (letter from the Chief, FM Branch, reference 8920-HVT).

[3] In the event that an applicant has listed an organization in its EEO program as a recruitment source which is unfamiliar to the staff but which would satisfy the EEO requirements, the applicant may amend its EEO program to describe that organization.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-87-046

For authority to supplement facilities for the provision of its authorized services between points in or reached via both the U.S. and the Republic of Cuba in the U.S.-Cuba Troposcatter System

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. C3-87-002-ML

For authority for unattended operation of its OH Troposcatter System station at Florida City, Florida

TRT TELECOMMUNICATIONS CORPORATION — File No. I-T-C-87-159

For authority to acquire a telegraph-grade satellite circuit for the provision of TRT's authorized message telegram service between the United States and the Republic of Cuba

AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND the CUBAN AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-87-160

For authority to construct and operate a submarine cable between the United States and the Republic of Cuba

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-87-161

For authority to lease and operate facilities for the provision of AT&T's authorized Private Line Services between points in or reached via the United States and the Republic of Cuba

COMMUNICATIONS SATELLITE CORPORATION — File No. I-T-C-87-163

For authority to provide satellite services between the United States and the Republic of Cuba

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: December 24, 1987; Released: January 8, 1988

By the Chief, Common Carrier Bureau:

1. The Commission has before it for consideration several applications for authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214, (19 to acquire and operate facilities for the provision of telecommunications services to Cuba. We are acting on these applications together because of the interrelationship of some of the applications and in view of recent clarifications from the Department of State concerning authorization of telecommunications services between the United States and Cuba under the Cuban Embargo Act of 1961, 23 U.S.C. 2370 (1961).

2. First, AT&T has filed two applications concerning the operation of its International Fixed Public Over-the-Horizon Troposcatter System (OH Troposcatter System) station located at Florida City, Florida. First, AT&T is seeking authority to activate additional circuits for the provision of its authorized services between points reached via both the U.S. and the Republic of Cuba (Cuba) via the OH Troposcatter System. Petitions to Deny were filed by the Communications Satellite Corporation (Comsat) and BellSouth Corporation, BellSouth Mobility, Inc., and its subsidiary, Miami CGSA, Inc. (collectively BellSouth) on January 16, 1987. An Opposition to the Petitions to Deny was filed by AT&T on January 29, 1987. A reply to AT&T's Opposition was filed on February 9, 1987 by Comsat. In addition, AT&T has filed an application requesting authority for unattended, continuous operation of the OH Troposcatter System. No comments or oppositions have been received in response to this application.

3. Subsequent to filing its OH Troposcatter applications, AT&T and the Cuban American Telephone and Telegraph Company (CATT)[1] filed an application to construct and operate a submarine cable (U.S.-Cuba #7 Cable System) between the United States and Cuba. Comments supporting the application were filed by BellSouth Mobility, Inc., and its subsidiary, Florida Cellular Service, Inc. (collectively, BellSouth), Florida Cellular Telephone Company (FCTC), and RCA Global Communications, Inc. (RCA Globcom). In the application, AT&T/CATT seek authority to replace the Key West, Florida-Havana, Cuba #5 and #6 Cable System (Key West-Havana cable) with a refurbished portion of the TAT-3 cable which was retired in 1986. The proposed cable is a single analog submarine cable of SD design with rigid two-way repeaters, to be located in the Atlantic Ocean (except for a land portion at each end) extending about 326 nautical miles between West Palm Beach, Florida in the United States and Guanabo, Cuba. The cable will have a capacity of one hundred thirty-eight (138) two-way voice-grade channels, each having a bandwidth of approximately 3 kilohertz. In addition, terminal equipment, including nine 16-channel broadband carrier telephone terminals (modified Type L

or the equivalent), associated power feed and channelizing equipment, will be installed at the U.S. terminal. Similar equipment will be installed at the terminal in Cuba. AT&T will own the terminal equipment in the cable station and the land portion at West Palm Beach. CATT will own the submerged cable, repeaters and equalizer, the terminal equipment at the terminal station and the land portion at Guanabo. The cost of the proposed facilities is estimated at approximately $7.7 million dollars.

4. TRT Telecommunications Corporation (TRT), has filed an application to acquire by lease and operate one telegraph-grade channel between the United States and Cuba. TRT proposes to establish a route between the United States and Cuba via Montreal utilizing one telegraph-grade channel in an existing TRT-Teleglobe Canada circuit extending between Fort Lauderdale, Florida and Montreal, Canada, which then will connect with a like channel in an existing Canada - Empresa de Telecommunicaciones Internationales de Cuba (EMTELCUBA) satellite circuit between Montreal and Havana, Cuba. Matching facilities in both the land line circuit between the U.S.-Canada border and Montreal, and the satellite circuit from Montreal to Havana, Cuba will be furnished by EMTELCUBA.

5. Finally, AT&T and Comsat each have filed applications to establish via the INTELSAT System a private line to Cuba to be used by the Federal Aviation Administration (FAA) for international aviation communications between the U.S. and Cuba. AT&T seeks authority to lease an INTELSAT half-circuit in an Atlantic Ocean Region (AOR) satellite from Comsat and to operate and use this facility together with matching facilities provided by its foreign correspondent in Cuba to provide private line services to the FAA between points in or reached via both the United States and Cuba. Comsat seeks authority to provide to AT&T for this purpose a 4 KHz SCPC voice-grade half-circuit to be uplinked from the Roaring Creek earth station located in Bloomsburg, Pennsylvania. Matching facilities will be provided by the Cuban correspondent from its earth station located in Havana.

DISCUSSION

6. The United States exercises an embargo upon trade and commercial relations between the United States and Cuba under the Cuban Embargo Act of 1961. The Departments of State and Treasury have joint responsibility for implementation of the statute. The Secretary of the Treasury is responsible for carrying out the prohibition and also is authorized to make or revoke exemptions from the embargo.[2] Exemptions for telecommunications are handled on a case-by-case basis. Such exemptions have generally only been granted for news media coverage of news worthy events of limited duration. Otherwise, it has been the policy of the U.S. government to deny requests to upgrade telecommunications facilities between the U.S. and Cuba.[3] Accordingly, it has been the Commission's practice to return any application for service to Cuba as unacceptable for filing absent an accompanying statement from the Department of State that the filing is in accord with U.S. policy.

7. The instant applications were accepted for filing in view of recent Department of State letters coordinated with the Treasury Department and sent to the Commission clarifying U.S. policy concerning the transmission of telephone, telegraph and telex communications between the United States and Cuba. [4] The State Department informed the Commission that, in the context of broad United States foreign policy interests, all transactions relating to communications with Cuba must remain subject to the Cuban embargo and all business arrangements with Cuban communications organizations must continue to be licensed by the Department of Treasury, Office of Foreign Assets Control (OFAC). It further stated that U.S. firms should be authorized or licensed by OFAC to enter into technical arrangements with Cuba only if the following principles are fully respected:

> -- No payments will be made to Cuba; all monies due Cuba from the settlement of accounts for services will be paid into blocked accounts in accordance with Department of the Treasury regulations;
>
> -- No technology or financing will be provided to Cuba by any U.S. firm including technology which Cuba might seek in order to undertake services with American companies (except in unusual circumstances after review and approval by the Departments of State and Treasury);
>
> -- Telephone service from Cuba will be collect and payable in the United States, where required by the Department of the Treasury.
>
> -- Those companies which provide "carrier's carrier" service or private leased circuits must notify customers of their obligation to obtain Treasury licenses and to take appropriate action thereafter to comply with those licenses.
>
> -- No service will be authorized using domestic transborder satellites (i.e. all service through INTELSAT); and
>
> -- All companies seeking to provide service to Cuba must have a Department of the Treasury license indicating these conditions and such others as the Treasury may require will be met.

The State Department also determined that: (1) AT&T's proposed replacement of its 1949-vintage submarine cable with a newer cable of similar technology would not be in conflict with U.S. policy; (2) the use of satellite circuits over existing INTELSAT and Comsat facilities also would not conflict with U.S. policy;[5] and (3) it would be consistent with U.S. policy to permit a modest annual increase in communications circuits between the U.S. and Cuba.[6] On this last point, the State Department indicated that no more than 90 circuits should be authorized for total communications service with Cuba in 1987; thereafter, the Commission may authorize an annual increase of up to 12 circuits for the years 1988 through 1990. The State Department stated that it would look to the Commission as the competent authority to determine issues relating to the distribution of these circuits. It said that existing or potential applications for the circuits are matters appropriately decided in the licensing process.

8. The applicants present a persuasive case for a grant of the proposed facilities and circuits. AT&T and CATT currently have two facilities for the provision of telecommunications service between the United States and Cuba: the Key West-Havana #5 and #6 Cable System; and the U.S.-Cuba Over-the-Horizon (OH) Troposcatter System. The Key West-Havana cable was installed in 1949,

with a design life of 25 years. This cable has been in service for approximately 38 years, is subject to frequent failures and outages and requires considerable maintenance and repair. It carries 24 circuits of which AT&T operates 20 circuits. These circuits are 17 Message Telephone Service (MTS), 2 Private Line (PL) circuits, and 1 Order-Wire circuit. The remaining four circuits are leased to other carriers. The OH Troposcatter System was installed in 1957, and while it now represents an outdated technology, its spare capacity is used to restore cable circuits during periods of outage. Currently, service to Cuba is being rendered via the OH Troposcatter System due to a cable outage. However, the OH Troposcatter System is presently the subject of an interference complaint alleging interference to the operation of cellular mobile carriers in the southern sections of Florida.[7]

9. The need for additional circuits on a reliable facility is clear. AT&T states that in 1986 customers attempted 28.0 million calls to Cuba. Only 368,000 calls from the U.S. to Cuba were completed. Thus, only 1.31% of calls made to Cuba were successfully terminated. The Department of State has indicated in its letter that use of the proposed cable facility would be consistent with U.S. policy. Accordingly, we will grant the AT&T/CATT application to construct and operate the proposed cable. In doing so, we note that AT&T intends to file applications to retire both the OH Troposcatter System and the Key West-Havana cable systems upon favorable Commission action on its application for the U.S.-Cuba #7 Cable System.[8] AT&T intends that all circuits on the OH System be transferred to the new cable when the proposed cable becomes operational.[9] Therefore, we will dismiss AT&T's OH applications (File Nos. I-T-C-87-046 and C3-87-002-ML). However, we will extend the temporary authority (TAO-1357) for the additional circuits to Cuba on the OH system now scheduled to expire on January 30, 1988, until such time as the U.S.-Cuba #7 Cable System is constructed and activated. In addition, we will expect AT&T to file in a timely manner an appropriate Section 214 application for discontinuance of its OH Troposcatter System and the Key West-Havana Cable System.

10. TRT presently provides message telegraph service between the United States and Cuba via two telegraph-grade channels in a point-to-point (High Frequency Radio) Telegraph Station located near Slidell, Louisiana. TRT notes that upon a grant of its request for a satellite circuit it will discontinue its HF radio system. In view of the age of TRT's HF System we believe that grant of its application is in the public interest. Although the State Department did not specifically discuss TRT's application, we find that it is consistent with the principles established by State Department to implement U.S. policy.[10] We therefore will grant TRT's application subject to the terms of the State Department letters. We expect TRT to file in a timely manner an appropriate Section 214 application for discontinuance of its HF radio system.

11. As to the AT&T and Comsat applications to establish private line to Cuba via INTELSAT for FAA use, it is clear that a basic concern for air safety justifies authorization of the proposed facility. Again, the Department of State has indicated that authorization of the facility would be consistent with U.S. policy. We therefore will grant these applications.

12. Finally, as to the assignment of circuits necessary to implement the current proposals, U.S. policy allows the authorization of a total of 90 circuits for service to Cuba in 1987. Thereafter, 12 circuits per year may be authorized for service to Cuba for the period 1988-1990. AT&T presently utilizes 77 circuits to provide telecommunications service to Cuba via the OH Troposcatter System. Since it is the intent of AT&T that service from both the Key West-Havana Cable and the OH System facilities be discontinued, it is necessary to assign 77 of the 90 circuits available for 1987 to AT&T in order to continue AT&T's existing service. We will assign one circuit to meet the service request of the FAA for satellite service and one satellite circuit for the provision of telegraph service to Cuba by TRT. The remaining 11 circuits for 1987 will be assigned to AT&T in view of the clear need for additional circuits for telephone service and the absence of any request from another applicant. As for the remaining circuits available under U.S. policy for authorization for 1988 through 1990, we anticipate initiating in the near future an appropriate proceeding to determine how they should be allocated to U.S. carriers for service to Cuba.

13. Accordingly, in view of the foregoing, IT IS ORDERED that application File Nos. I-T-C-87-159, I-T-C-87-160, I-T-C-87-161, and File No. I-T-C-87-163 ARE GRANTED, subject to the following terms, conditions, and limitations, and:

(A) TRT is authorized to:

(1) utilize for service to Cuba an existing Fort Lauderdale-Montreal bearer circuit to the U.S.-Canada border;

(2) lease from Teleglobe Canada and operate a telegraph-grade half-circuit between the U.S.-Canada border and Montreal;

(3) lease from Teleglobe Canada and operate a telegraph-grade half-circuit between Montreal and an appropriate satellite over the Atlantic Ocean, connecting with a similar circuit between the satellite and an earth station in Cuba, furnished by TRT's correspondent in Cuba; and

(4) use said facilities to provide TRT's message telegram services between the United States and Cuba.

(B) AT&T and CATT are authorized to:

(1) construct and operate the U.S.-Cuba #7 Cable System as proposed herein;

(2) assign the circuits of the U.S.-Cuba #7 Cable System as set forth in paragraph 12 herein; and

(3) provide their authorized services between points in or reached via both the United States and Cuba.

(C) AT&T is authorized to:

(1) lease from Comsat a single 4 kHz SCPC voice-grade half-circuit between the Roaring Creek earth station located in Bloomsburg, Pennsylvania and an INTELSAT Atlantic Ocean Region satellite together with a matching single half-circuit between the satellite and an earth station in Havana, provided by AT&T's foreign correspondent in Cuba for the specific purpose of providing international civil aviation service to the FAA between the U.S. and Cuba.

(D) Comsat is authorized to:

(1) provide a single 4 kHz SCPC voice-grade half-circuit between the Roaring Creek earth station in Bloomsburg, Pennsylvania and an INTELSAT Atlantic Ocean Region satellite at 325.5 degree E.L. together with a matching half-circuit between the satellite and an earth station in Havana, Cuba, provided by AT&T's foreign correspondent in Cuba, for the specific purpose of providing international civil aviation communications to the FAA between the U.S. and Cuba.

14. IT IS FURTHER ORDERED that AT&T's applications File Nos. I-T-C-87-046 and C3-87-002-ML ARE HEREBY DISMISSED.

15. IT IS FURTHER ORDERED that AT&T's TAO-1357 IS HEREBY EXTENDED until such time as the U.S.-Cuba #7 Cable System is constructed and activated.

16. IT IS FURTHER ORDERED, that the applicants herein limit discussions with the Cuban Government to those technical details necessary to bring into use the facilities herein authorized.

17. IT IS FURTHER ORDERED, that the applicants herein comply with the Department of the Treasury's Office Foreign Assets control regulations and the Department of State's policies as enunicated in the Department's letters dated July 31, and September 16, 1987.

18. IT IS FURTHER ORDERED, that no substantial changes inconsistent with this or any other relevant Commission order shall be made in the construction and maintenance agreement governing the U.S.-Cuba #7 Cable System, and copies of the agreement shall be filed with the Commission 30 days before execution.

19. IT IS FURTHER ORDERED, that the Commission retains jurisdiction to reallocate U.S. carriers interests in the capacity of the U.S.-Cuba #7 Cable System, as the public interest may require, and further jurisdiction is retained by the Commission over all matters relating to AT&T/CATT's ownership, management, maintenance and operation of the U.S.-Cuba #7 Cable System authorized herein.

20. IT IS FURTHER ORDERED, that this authorization is issued subject to the terms and conditions of any license issued to the applicants herein under the act entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§ 34-39), covering the subject submarine cable, and shall become effective upon the acceptance of the aforementioned license by all such parties.

21. IT IS FURTHER ORDERED, that the Commission retains jurisdiction over this matter to reallocate the U.S. carriers interests in the capacity of the communications satellite system and earth stations, and to insure that all present and future authorized carriers have non-discriminatory use of, and equitable access to the communications satellite system and earth stations.

22. IT IS FURTHER ORDERED, that no applicant herein shall dispose of any interest in any facility or circuit it is authorized to acquire in any way without prior authorization by the Commission.

23. IT IS FURTHER ORDERED, that each applicant herein shall file with the Commission an appropriate application for authority before acquiring and operating additional facilities for telecommunications service to Cuba.

24. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] CATT is a corporation organized and existing under the laws of Cuba and is jointly owned by AT&T and ITT Corporation.

[2] The Office of Foreign Assets Control is responsible for promulgating the rules, 31 CFR Part 515, governing the Cuban Embargo Act. Section 515.542 of those rules as originally issued contained a general license authorizing all transactions of common carriers incidental to the receipt or transmission of mail and communications with Cuba. However, in actual practice, the Office of Foreign Assets Control issued specific licenses authorizing appropriate transactions to each of the small number of common carriers providing telephone and telegraph service between the United States and Cuba. In 1980, it amended Section 515.542 to require specific licenses on a case-by-case basis for transactions incident to the receipt or transmission of communications between the United States and Cuba. At the same time, the rules were amended to provide for a general license for transactions incident to the use of satellite channels for the transmission of television news and news programs originating in Cuba by United States news organizations, Section 515.542(b).

[3] Order Dismissing Applications for Service to Cuba, Mimeo No. 6460 (released September 14, 1983); see also, American Telephone and Telegraph Company, Mimeo No. 3980 (released August 15, 1984).

[4] Letter from Acting Director, Bureau of International Communications and Information Policy, Department of State, to Chairman, Federal Communications Commission, dated July 31, 1987; Letter from Director, Office of Regulatory and Treaty Affairs, Department of State, to Assistant Chief, International, Common Carrier Bureau, dated September 16, 1987. *See* also Letter from U.S. Coordinator and Director, Bureau of International Communications and Information Policy, Department of State, to Chairman, Federal Communications Commission, dated December 5, 1986.

[5] While Cuba commenced operation of its INTELSAT earth station in 1979, satellite service between the United States and Cuba has not been authorized on a permanent basis. However, temporary authorizations for satellite services to transmit news coverage and certain athletic events has been granted.

[6] The State Department further asked the Commission to condition carrier licenses: (1) to ensure that discussions with the Cuban government are limited to those technical details necessary to bring authorized facilities into use; and (2) to ensure compliance with applicable Treasury regulation and State Department policies.

[7] *See* Petition to Deny filed by Bell South in File No. I-T-C-87-046.

[8] Letter from American Telephone and Telegraph Company to the Secretary, Federal Communications Commission, associated with File No. I-T-C-87-046, dated December 4, 1987.

[9] AT&T states that it is studying restoration options, including the possible use of satellite, to ensure restoration of U.S.-Cuba service in the event of any service interruption to the new facility.

[10] The Bureau's staff has orally coordinated the TRT application with State Department staff to confirm consistency with the principles established by the State Department letters.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
CUBAN AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. S-C-L-87-004

Application for a license to land and operate in the United States a Submarine Cable System between the United States and the Republic of Cuba

CABLE LANDING LICENSE

Adopted: December 24, 1987; Released: January 8, 1988

By the Chief, Common Carrier Bureau:

1. The Commission has under consideration an application, File No. S-C-L-87-004, filed on March 27, 1987 by the American Telephone and Telegraph Company (AT&T) and the Cuban American Telephone and Telegraph Company (CATT),[1] requesting a license to land and operate in the United States a Submarine Cable System between the United States and the Republic of Cuba (Cuba). The application was placed on public notice on August 12, 1987. Comments were filed by BellSouth Corporation; BellSouth Mobility, Inc. and its subsidiary Florida Cellular Service, Inc. (collectively BellSouth), Florida Cellular Telephone Company (FCTC), and RCA Global Communications, Inc. (RCA Globcom). All of the commentators support a grant of the captioned application.

2. The applicants state that the proposed cable, the U.S.-Cuba 7 Cable System consists of a single analog submarine cable of SD design with rigid two-way repeaters, to be located in the Atlantic Ocean (except for a land portion at each end) between West Palm Beach, Florida in the United States and Guanabo, Cuba. The proposed route of the cable will be about 326 nautical miles in length. The core of the cable will be a central conductor consisting of a steel strand with a copper wrapping, insulated with a water impervious material (polyethylene) and surrounded by a return copper conductor and outer protective jacket of polyethylene. Except where shallow water laying requires armored cable, the cable will be armorless. The cable will have a capacity of one hundred thirty-eight (138) two-way voice-grade channels, each having a bandwidth of approximately 3 kilohertz. In addition, terminal equipment, including nine 16-channel broadband carrier telephone terminals (modified Type L or the equivalent), associated power feed and channelizing equipment, will be installed at the U.S. terminal. Similar equipment will be installed at the terminal in Cuba. AT&T will own the terminal equipment in the cable station and the land portion at West Palm Beach. CATT will own the submerged cable, repeaters and equalizer, the terminal equipment at the terminal station and the land portion at Guanabo. The cost of the proposed facilities is estimated at approximately $7.7 million dollars. Since the existing cable station at West Palm Beach, Florida will be used for landing this system, the application does not propose a major action within the meaning of Section 1.305 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321-4347. *See Report and Order*, 49 FCC 2d 1313, 1320 (1974).

3. In an accompanying order that we are adopting today, we have determined that grant of AT&T and CATT's application (File No. I-T-C-87-160) for authority pursuant to Section 214 of the Communications Act, as amended, to construct and operate the cable for which landing authority is sought herein is in the public interest. Also, pursuant to Executive Order No. 10530, approval on behalf of the Secretary of State to grant a cable landing license to AT&T and CATT was given by a letter dated October 1, 1987. Consequently, we will grant the applicants request for a cable landing license for the reasons set forth in our Section 214 authorization.

4. Accordingly, the Commission HEREBY GRANTS AND ISSUES under the provisions of an Act entitled "An Act Relating to the Landing and Operation of Submarine Cables in the United States", 47 U.S.C. Sections 34-39, and pursuant to authority delegated to us under Exec. Order No. 10.530, 3 C.F.R. 1954-1958 Comp., p. 189 (1961), reprinted in, 3 U.S.C. Section 301 app. at 263-265 (1976), to AT&T and CATT a license to land and operate a submarine cable between West Palm Beach, U.S. and Guanabo, Cuba which will be a single analog submarine type of SD design with rigid two-way repeaters and equipped to provide up to 138 two-way voice-grade circuits, each having a bandwidth of approximately 3 kilohertz.

5. The authority herein is granted subject to: (1) "An Act relating to the landing and operation of submarine cables in the United States", 47 U.S.C. Sections 34-39; (2) the Cuban Embargo Act of 1961, 22 USC 2370, The Office of Foreign Assets Control Regulations, 31 CFR, Part 515, and the Department of State Policies as enunicated in its letters dated July 31, and September 16, 1987; (3) the Communications Act of 1934, as amended, 47 U.S.C., Sections 151-609; (4) subsequent applicable acts; (5) all rules and regulations of the Federal Communications Commission; (6) any treaties or conventions relating to communications to which the United States of America is now or may hereafter become a party; (7) any action by the Commission or the Congress of the United States of America rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and (8) the following conditions:

> (1) That the location of the cable within the territorial waters of the United States of America, its territories and possessions, and upon the foreshore thereof, shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensees at their expense upon the request of the Secretary of the Army whenever he considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvements of harbors for navigational purposes;

(2) That the Licensees shall at all times comply with any requirements of appropriate United States Government authorities regarding the location and concealment of the cable buildings and apparatus with a view to protecting and safeguarding the cable from injury or destruction by enemies of the United States of America;

(3) That the Licensees or any persons or companies controlling them or controlled by them do not enjoy and shall not acquire any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to land, connect or operate cables or landlines, to construct or operate radio stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensees or any persons or companies controlling them or controlled by them are parties;

(4) That the operation of facilities herein authorized shall be limited to the provision of such communication service or services as may be authorized by the Federal Communications Commission for these facilities only upon an application filed therefor and shall be consistent with U.S. policy under the Cuban Embargo Act of 1961, 22 U.S.C. 2370 (1961), concerning the transmission of telephone, telegraph and telex communications between the United States and Cuba as expressed in Department of State letters to the Commission on July 31, 1987 and September 16, 1987;[2]

(5) That the Government of the United States of America shall be entitled to the same or similar privileges with respect to its official government messages to be transmitted over the cable as may by law, regulation, agreement or otherwise be granted by Licensees to any other government;

(6) That neither this license, the rights herein granted, nor the cable herein authorized shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensees to any persons, unless the Federal Communications Commission shall give prior consent in writing;

(7) That this license is revocable after due notice and opportunity for hearing by the Federal Communications Commission in the event of breach or non-fulfillment of any reasons specified in Section 2 of the above-cited Act entitled, "An Act relating to the landing and operation of submarine cables in the United States"; or for failure to comply with the terms of the authorization;

(8) That the Licensees shall notify the Commission in writing of the date on which the cable is placed in service; and this license shall expire 25 years from that date, unless renewed or extended upon proper applications dully filed no less than six months prior to the expiration date, and that upon expiration thereof all rights granted herein shall terminate; and

(9) The terms and conditions upon which this license is given shall be accepted by the Licensees, and evidence of said acceptance shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WESTERN UNION INTERNATIONAL, INC.	File No. USP-87-005(W)
WESTERN UNION TELEGRAPH COMPANY	File No. USP-87-010(W)
FTCC COMMUNICATIONS, INC./TRT TELECOMMUNICATIONS CORP.	File No. USP-87-013(W)

Petitions for Waiver of the International Settlements Policy to Reduce the Accounting Rate for International Direct Telex Service Between the United States and the CEPT Countries

MEMORANDUM OPINION AND ORDER

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Common Carrier Bureau:

1. Four international record carriers have filed petitions for waiver of the international settlements policy (ISP) to permit reductions in the accounting rate for international direct telex service between the continental United States and the countries of the Conference Europeene des Administrations des Postes et Telegraphes (CEPT), excluding the United Kingdom and Ireland.[1] Western Union International, Inc. (WUI) seeks an accounting rate of SDR 1.05 per minute divided on a 50/50 basis, Western Union Telegraph Company (Wutco) seeks a reduction to SDR 1.0 per minute with an equal division, and FTCC Communications, Inc. (FTCC) and TRT Telecommunications Corporation (TRT), in a joint request, seek to lower the rate to SDR 0.98 per minute divided 50/50. RCA Global Communications, Inc. (RCA) filed oppositions to all three requests and ITT World Communications Inc. (ITT) opposed the Wutco and FTCC/TRT requests. FTCC and Wutco filed comments on WUI's request, Graphnet, Inc. (Graphnet) commented on Wutco's request, and WUI filed comments on the FTCC/TRT request. Responsive pleadings were filed.

2. In their waiver requests, WUI, Wutco and FTCC/TRT assert that a reduction in the accounting rate with CEPT will serve the long-term U.S. public interest. Wutco notes that the CEPT administrations have maintained for several years that telex accounting rates are above-cost and that their telex traffic is being diverted to other services by artificially high collection rates.[2] WUI and Wutco state that telex accounting rates are too high in relation to the accounting rate for switched telephone traffic (currently SDR 1.40 per minute), which they allege is more costly to handle. WUI also states that a reduction in the accounting rate will accommodate the effects on CEPT of fluctuations in the value of the SDR relative to the weakening dollar.[3] WUI and FTCC/TRT suggest that a lower accounting rate will permit the CEPT administrations to reduce the collection rates charged to customers and that such reduced collection rates will improve the net settlement position of U.S. carriers, permitting a reduction in U.S. collection rates and stimulating demand for U.S.-outbound telex service. [4]

3. WUI estimates that it will experience reduced revenues of approximately $200,000 in the first year if its accounting rate with CEPT is reduced to SDR 1.05. Wutco states that its net settlements with the CEPT countries will increase by approximately $72,000 per year if it is permitted to reduce the accounting rate to SDR 1.0. FTCC advises that its annual revenue will decrease by $93,000, and TRT states that its annual revenue will increase by $45,000, if their proposed accounting rate reduction to SDR 0.98 is approved. All waiver proponents claim that they cannot estimate the precise impact of the requested accounting rate reductions on other U.S. carriers. They state that no CEPT administration has proposed to change the method by which return traffic is allocated or otherwise has attempted to secure concessions by measures which indicate whipsawing.

4. In opposing the waiver requests, RCA and ITT claim that the proposed waivers favor the CEPT administrations and CEPT telex subscribers and that the waiver proponents do not demonstrate any benefits to the U.S. public interest. ITT states that the waiver proponents seek "hunting licenses" with which to approach the CEPT administrations for concessions in the form of increased U.S.-inbound telex traffic, voice operating agreements and facilities. Estimating that approximately one-third of the U.S. IRCs' current inbound telex traffic is interconnected with other carriers, RCA claims that a reduction in the telex accounting rate with CEPT, coupled with concurrent actions of the terminating IRCs to increase termination rates, would threaten the scheme of IRC interconnection by forcing the IRCs to provide interconnection at a loss or with minimal retained revenue.[5] RCA estimates that a reduction of the accounting rate to SDR 1.05, the smallest of the requested reductions, will cause an industry-wide loss of $700,000.[6] ITT states that if the Commission deems some reduction in the CEPT accounting rate necessary for reasons of fairness, ITT requests grant of WUI's request for waiver to permit a 1.05 SDR accounting rate as the least onerous of the proposed accounting rate reductions.

5. In its comments on the WUI proposal, FTCC states that there is no reason that the Commission cannot approve waivers permitting WUI to establish one reduced accounting rate with CEPT while FTCC establishes another. Accordingly, it supports the WUI request. Similarly, Graphnet urges approval of the Wutco petition, stating that Commission regulation of accounting rates should be limited to cases which present a clear case of whipsawing by PTTs, and then only to the extent necessary to protect U.S. ratepayers. Graphnet believes that flexibility in negotiating accounting rates will promote competition among existing carriers to the ultimate benefit of U.S. customers. Likewise, WUI supports grant of the FTCC/TRT request, with the qualification that the SDR 0.98 per minute accounting rate should be applied to all of the CEPT administrations, including the United Kingdom and Ireland.

DISCUSSION

6. For over five decades, Commission policy has been that oversight of settlement arrangements between U.S. carriers and foreign administrations is necessary to increase the effectiveness of its pro-competitive policies and, at the same time, ensure that operating agreements achieve their purpose of allowing U.S. carriers and their foreign correspondents fair compensation for the costs of providing services.[7] Specifically, the Commission has required that all carriers providing the same service to the same foreign point have the same accounting, settlement and division of tolls arrangements with the foreign administration. The Commission has also stated, however, that in an effort to encourage new entry, competition and innovation, it would consider a variety of factors, including, but not limited to, lower collection rates, improved services, and increased competition, in determining whether to grant petitions for waiver.[8]

7. In the three petitions for waiver, the petitioners assert that a reduction in international accounting rates for telex traffic can and should result in benefits for American consumers of international telex services. To a large extent, the petitioners' assertion will be proved correct, however, only if the CEPT administrations use this international accounting rate reduction as an opportunity to reduce CEPT collection rates. We agree with the petitioners that such an approach could lead to benefits to U.S. carriers by reducing the loss of telex customers to other services, stimulating demand, and providing an opportunity for U.S. record carriers to maintain or increase their long-term telex revenues, and to U.S. consumers by making possible outgoing telex rate decreases.

8. The Commission has clearly decided, however, in CC Docket 85-204, that continuation of the longstanding policy of Commission oversight of international settlement arrangements and continuation of the requirement that all U.S. record carriers offering similar service to the same foreign point do so under the same accounting rates, settlement rates and divisions of tolls is in the public interest.[9] As a result, we are concerned that the grant of each of the three waiver requests would effectively vitiate the Commission's longstanding policy of requiring uniform accounting rates, settlement rates and divisions of tolls. At the same time, however, we recognize the concern of the other U.S. carriers and the CEPT administrations that one carrier not be permitted to deny the potential benefits of an international accounting rate reduction to the entire record carrier industry. Indeed, the record demonstrates that there is substantial consensus among U.S. record carriers and the CEPT administrations for a reduction in the accounting rate for international telex service with the CEPT administrations from 1.14 to 1.05 SDRs. Therefore, we believe that good cause has been shown for the grant of the WUI petition for an accounting rate of 1.05 SDRs divided on a 50/50 basis, notwithstanding the opposition of RCA.[10]

9. We do not agree with the assertion by several petitioners, however, that we could grant each of the petitions for waiver and be assured that there was no whipsawing of U.S. carriers. To the contrary, the Commission's longstanding policy has been developed specifically to address the need for uniformity in situations in which foreign administrations have a monopoly over the provision of telecommunications services in their home markets. That situation remains unchanged. As a result, we will deny the Wutco and FTCC/TRT petitions for waiver at this time.

10. Accordingly, IT IS ORDERED, that the petition for waiver of the international settlements policy filed by Western Union International, Inc., to permit reductions of the accounting rate for direct international telex service between the United States, excluding Alaska and Hawaii, and the countries of the Conference Europeene des Administrations des Postes et Telegraphes, excluding the United Kingdom and Ireland, IS GRANTED.

11. IT IS FURTHER ORDERED, that the petitions for waiver filed by Wutco and FTCC/TRT ARE DENIED.

12. IT IS FURTHER ORDERED, that other U.S. international record carriers are given leave to establish an accounting rate of SDR 1.05 per minute by filing appropriate amendments to their Sections 43.51 and 43.53 reports, *see* 47 C.F.R. Sections 43.51 and 43.53, without the need for additional petitions for waiver.

13. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The current accounting rate between the United States (excluding Alaska, Hawaii and offshore possessions) and CEPT (excluding the United Kingdom and Ireland) is SDR 1.14 per minute. The SDR (Special Drawing Right) is a monetary unit created by the International Monetary Fund. Its value is a weighted average of five international currencies -- the dollar, the West German mark, the French franc, the Japanese yen and the British pound. The SDR was worth $1.21 when it was created; its current value is $1.37 (as of November 30, 1987). Thus, the current CEPT accounting rate is valued at approximately $1.56 per minute.

[2] The CEPT administrations seek a two-step accounting rate reduction, first to SDR 0.90 and then to SDR 0.76 per minute. *See* WUI Petition for Waiver (filed November 3, 1986) at para. 3. WUI notes that its proposal offers a compromise position which accommodates the CEPT request for a reduced accounting rate.

[3] To dampen the effect of SDR-value fluctuations, Wutco proposes a "capping" feature. Under the feature, if the SDR is valued at less than $1.15 or more than $1.25, one half of the deficiency or surplus would be absorbed by each of the parties to the operating agreement. Thus, within the stated range, payments on terminating traffic would equal 50% of the accounting rate, or SDR 0.50 converted into dollars at whatever the exchange rate might be. However, at a hypothetical exchange rate of 1.0 SDR = $1.28, settlement would be effected as if SDR 1.0 = $1.265 (*i.e.*, $1.25 + 1/2($.03)). Similarly, at a hypothetical exchange rate of SDR 1.0 = $1.09, settlement would be made as if SDR 1.0 = $1.12(*i.e.*, $1.15 - 1/2($.06)).

[4] Wutco states that, if its waiver request is granted, it will lower its collection rates by one to five cents per minute to those countries that agree to the lower acounting rate.

[5] RCA and ITT state that, for several reasons, the revenue that U.S. carriers retain is lower than the difference between the U.S. share of the accounting rate and the domestic payment to terminate interconnected traffic. These factors include the characteristic shortfall of settled minutes paid by the overseas administrations, as compared to the minutes of use paid by the interconnecting carrier to the terminating carrier; the cost of money associated with the several month lag of international settlements behind domestic outpayments; and the "rounding up" of fractional minutes to the next whole minute by terminating U.S. carriers while U.S. carriers are usually paid, in the settlement process, only for fractional minutes measured in pulses.

[6] Based on past practice, RCA believes that grant of these waiver requests will be followed by a request to lower the accounting rate with the United Kingdom and Ireland, which tends to be about 20 cents lower than the CEPT accounting rate. If that happens, RCA estimates that the industry could lose $1.5 million annually.

[7] The policy, often called the "uniform settlements policy," was first developed in the 1930's and had its roots in antitrust law. The policy evolved through Commission decisions, policy statements, and practice. *See , e.g.*, Mackay Radio and Telegraph Co., 25 F.C.C. 690 (1951), *rev' d on other grounds sub nom.* RCA Communications, Inc. v. FCC, 201 F.2d 69486 (1953) [Mackay II]; TRT Telecommunications Corp., 46 F.C.C. 2d 1042 (1984). Specifically, the policy was developed to respond to the ability and incentive of foreign Postal Telephone and Telegraph Administrations (PTTs), which have a monopoly over the provision of telecommunications services in their home markets, to obtain unduly favorable terms and conditions in their relationships with multiple U.S. carriers, to the detriment of U.S. carriers and ratepayers. The approach most commonly used by PTTs has been the manipulation of multiple U.S. carriers against one another in a process referred to as "whipsawing". Generally, this has involved a PTT seeking a modification of the accounting rate in a manner more favorable to the PTT -- that is, a reduction in the rate paid by the PTT to the U.S. carrier for delivery of taffic in the U.S. or an increase in the rate paid by U.S. carriers to the PTT for delivery of traffic in that foreign country. *See , e.g.*, Implementation and Scope of Uniform Settlements Policy for Parallel International Communications Routes, CC Docket No. 85-204, 51 Fed. Reg. 4736 (February 7, 1986)(hereinafter Report and Order).

[8] *See , e. g.*, Report and Order, *supra* note 7 at para. 51.

[9] *Id. See also*, Order on Reconsideration, CC Docket 85-204, 2 FCC Rcd 1118 (1987).

[10] As discussed above, we cannot agree with RCA that a reduction in the telex accounting rate with CEPT to 1.05 SDRs will necessarily cause harm to the U.S. ratepayer due to reduced profits from delivery of U.S.-inbound telex traffic. Moreover, the record provides insufficient cost information to determine whether an accounting rate reduction will cause some IRCs to provide domestic interconnection at a loss. Further, although the CEPT administrations have control over allocation of U.S.-inbound traffic among the carriers, any IRC which cannot profitably deliver such traffic to another carrier's domestic network may request that the PTT select the facilities of another carrier for the international segment of delivery.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

UNIGLOBE COMMUNICATIONS SYSTEMS, INC. File No. I-T-C-88-010

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: December 24, 1987; Released: January 8, 1988

By the Acting Chief, International Facilities Division:

1. We have before us for consideration an application, filed on October 27, 1987 and supplemented by letters of November 30, and December 7, 1987, by Uniglobe Communications Services, Inc. (UCS) (formerly Overseas Telecommunications Services, Inc.), requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on November 4, 1987. Comments were filed by Overseas Telecommunications, Inc. pointing out the similarity between its name and the former name of the applicant, which has now been changed.

2. Upon review of the application, we find that the applicant has the legal, technical and financial qualifications to provide the proposed services. UCS, a Puerto Rico corporation, is a start-up company which proposes to resell international switched voice services in competition with other carriers already providing resale of such service. USC has filed the information required by the Commission pursuant to Section 63.01 of its Rules. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by UCS.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-010 IS GRANTED and UCS is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff FCC No. 1 between the U.S., Hawaii, Puerto Rico and the Virgin Islands, on the one hand, and Canada and Mexico and those points listed in that tariff on the other hand.

5. Copies of any operating agreements entered into between UCS and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that UCS shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

FTC COMMUNICATIONS, INC. File No. I-T-C-88-014

Application for authority to acquire and operate facilities for service to Japan

ORDER AND AUTHORIZATION

Adopted: December 29, 1987; Released: January 8, 1988

By the Acting Chief, International Facilities Division:

1. The instant uncontested application, filed on October 26, 1987 by FTC Communications, Inc. (FTCC), requests authority to acquire and operate facilities in the HAW-4 and TPC-3 cables for service to Japan. Upon consideration of the application, we find that authorization of the requested facilities and services is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-014 IS GRANTED and FTCC is authorized to:

a. acquire a one-half interest in and operate 35 minimum assignable units of ownership (MAUO's) in the TPC-3 cable, each with a nominal capacity of 64 kbps;

b. acquire a one-half interest in and operate 30 similar MAUO's in the HAW-4 cable; and

c. use said facilities to provide FTCC's regularly authorized services between the U.S. and Japan and beyond.

3. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-590

In the Matter of

Amendment of Section 73.202(b), RM-6112
Table of Allotments,
FM Broadcast Stations.
(Endwell, New York)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by Harold Kozlowski (petitioner), proposing the allocation of Channel 298A to Endwell, New York, as the community's first local FM service. Petitioner states that he will apply for the channel, if allocated.

2. Channel 298A can be allocated to Endwell in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) north to avoid a short-spacing to unoccupied and unapplied for Channel 299A at Tunkhannock, Pennsylvania. Canadian concurrence in the allotment must be received since Endwell is located within 320 kilometers (199 miles) of the U.S.-Canadian border.

3. We believe the public interest would be served by proposing the allocation of Channel 298A to Endwell since it could provide the community with its first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Endwell, New York	--	298A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Harold Kozlowski
13511 Leith Court
Chantilly, Virginia 22021
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-591

In the Matter of

Amendment of Section 73.202(b),	RM-5845
Table of Allotments,	RM-5935
FM Broadcast Stations.	RM-5992
(Scottsboro, Alabama; Trenton, Georgia; Signal Mountain, Tennessee)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. Before the Commission for consideration are three separately-filed petitions for rule making which are mutually-exclusive. Kea Radio, Inc. (Kea), licensee of Station WKEA(FM) (Channel 252A), Scottsboro, Alabama, seeks the substitution of Channel 251C2 for Channel 252A and modification of its license to specify operation on the higher powered channel, in order to provide that community with its first wide coverage area FM service. RA-AD of Trenton, Inc. (RA-AD), seeks the allotment of Channel 251A to Trenton, Georgia, as that community's second local FM service. Alternatively, RA-AD requests that Channel 251A be substituted for Channel 274A at Trenton.[1] SonCom, Inc. (SonCom) seeks the allotment of Channel 251A to Signal Mountain, Tennessee, as a first FM service.

2. An analysis of the above proposals reveals that one is seeking a modification of its existing license (RM-5845), while another seeks a second local FM service (RM-5935), and the remaining proposal seeks a first local FM service (RM-5992). The distance between the Scottsboro modification proposal (Channel 251C2), at a site 24.5 kilometers southeast, and the Trenton proposal (Channel 251A), based on a site 9.8 kilometers northeast, is 51 kilometers whereas Class A-C2 co-channels must be separated by a minimum of 163 kilometers. Additionally, the distance between Scottsboro and the first local service proposal at Signal Mountain (Channel 251A), utilizing a site 3.6 kilometers southwest, is 68.7 kilometers whereas a separation of 163 kilometers is required. Moreover, the distance between Trenton and Signal Mountain is 19.1 kilometers whereas 105 kilometers is required between Class A co-channels. Thus, since the proposals are separated by less than the minimum distances required by § 73.207(b) of the Commission's Rules, and we are unaware, at this time, of any other Class A or C2 channels to accommodate each, it appears that only one can be granted.

3. As a result of our preliminary analysis, the proposals herein must be considered on a comparative basis. Accordingly, we shall provide each proponent an opportunity to demonstrate in their comments why their community should be preferred. In this regard, the parties should be guided by the allotment priorities enunciated in the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), as follows:

(1) first aural service
(2) second aural service
(3) first local service
(4) other public interest matters.

Co-equal weight is given to priorities (2) and (3).

4. Our initial approach would favor the proposed first local service at Signal Mountain, Tennesse (priority 3). The Scottsboro modification proposal to expand existing service and the Trenton proposal to add an additional service each fall under "other public interest matters" (priority 4). Therefore, the proponents should provide comparison studies to support their proposals. Such analysis should include showings of any first or second aural services to areas which are currently unserved or underserved, utilizing the guidelines set forth in *Roanoke Rapids, NC*, 9 FCC 2d 672 (1967), and *Anamosa and Iowa City, IA*, 46 FCC 2d 520 (1974).

5. Since the Scottsboro modification proposal seeks to upgrade on an adjacent channel, we shall propose to modify the license of Station WKEA(FM), as requested, in the event Channel 251C2 is substituted for Channel 252A. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, no other expressions of interest in the Scottsboro proposal will be entertained.

6. In view of the above, the Commission believes it is appropriate to elicit comments on the alternate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Scottsboro, Alabama	252A	251C2
Trenton, Georgia	274A	251A, 274A
Signal Mountain, Tennessee	--	251A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, it should be noted that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Ronald A. Livengood
President, Kea Radio, Inc.
P.O. Box 459
Scottsboro, AL 35768

Robert S. Stone, Esq.
McCampbell & Young
2021 Plaza Tower
P.O. Box 550
Knoxville, TN 37901-0550
(Counsel for RA-AD of Trenton, Inc.)

James E. Price
Sterling Communications, Inc.
P.O. Box 80484
Chattanooga, TN 37411-7484
(Consultant to SunCom, Inc.)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] Two applications are pending for Channel 274A at Trenton, one of which is the petitioner's (BPH-870917MD). Therefore, if Channel 251A is ultimately allotted to Trenton in this proceeding, petitioner will be required to withdraw its application for Channel 274A.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-592

In the Matter of

Amendment of Section 73.202(b), RM-6022
Table of Allotments,
FM Broadcast Stations.
(Iron River and Kingsford,
Michigan)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. Before the Commission is a petition for rule making filed by Northland Advertising, Inc. (petitioner), requesting the substitution of FM Channel 256C2 for Channel 257A at Iron River, Michigan. Petitioner also requests modification of its license for Station WIKB-FM, to specify operation on the higher class channel.

2. In support of its proposal, petitioner states that granting this request would enable Station WIKB-FM to serve a larger area of the upper peninsula of Michigan. The expanded service would be principally in Iron County which includes the towns of Iron River, Crystal Falls, Stambaugh and Caspian. Petitioner indicated a desire to provide programming designed for the particular public interest of the area.

3. Channel 256C2 can be allocated to Iron River, Michigan, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 255A is deleted from Kingsford, Michigan. Channel 255A was allocated to Kingsford in MM Docket 84-231 and was made available for application in Window No. 11. A construction permit for this channel has been issued to Edward and Alice Slater (BPH 860507PN). Petitioner has proposed the substitution of FM Channel 251A for Channel 255A at Kingsford. The proposed substitution at Kingsford can be accomplished in compliance with the minimum distance separation requirements at the authorized site for Channel 255A. An *Order to Show Cause* will be issued for this purpose. Whenever an existing licensee is ordered to change frequencies in order to accommodate a new channel allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the affected station for the costs incurred in changing frequencies. Petitioner did not do so in its petition and is requested to make this commitment when filing comments in response to the *Notice*.

4. As for the requested Iron River upgrade, we shall propose to modify the license of Station WIKB-FM, Channel 257A, to specify operation on FM Channel 256C2, in accordance with Section 1.420(g) of the Commission's Rules. Since the communities of Iron River, Michigan and Kingsford, Michigan, are located within 320 kilometers (200 miles) of the common U.S.-Canadian border, concurrence of the Canadian government will be required for the allotment of Channel 256C2 at Iron River and Channel 251A at Kingsford.

5. In order to provide a wide coverage area station for the Iron River, Michigan area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Iron River, Michigan	257A	256C2
Kingsford, Michigan	255A	251A

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Edward and Alice Slater, permittee of Channel 255A, Kingsford, Michigan, SHALL SHOW CAUSE why their permit should not be modified to specify operation on Channel 251A in lieu of Channel 255A.

7. Pursuant to Section 1.87 of the Commission's Rules, Edward and Alice Slater, may not later than **February 29, 1988,** file a written statement showing with particularity why their permit should not be modified as proposed in the Order to Show Cause. The Commission may call on Edward and Alice Slater to furnish additional information. If Edward and Alice Slater raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification for hearing. If no written statement is filed by the date referred to above, Edward and Alice Slater will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Order to the following:

Edward and Alice Slater
1115 Stockbridge
Iron Mountain, Michigan 49801
(BPH 860507PN)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John W. Hough
John W. Hough & Associates, P.C.
208 S. LaSalle Street
Suite 1876
Chicago, Illinois 60604
(Counsel for the petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-589

In the Matter of

Amendment of Section 73.202(b), RM-6108
Table of Allotments,
FM Broadcast Stations.
(Creswell, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by Visionary Radio Euphonics of Oregon, Inc. (petitioner), requesting the substitution of Channel 237C2 for Channel 237A at Creswell, Oregon, and the modification of its license for Station KZAM to specify the higher powered channel. Petitioner states that it will apply for the channel, if allocated.

2. Channel 237C2 can be allocated to Creswell in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.3 miles) south to avoid a short-spacing to Station KXL-FM, Channel 238C, Portland, Oregon. As requested, we shall also propose to modify petitioner's license for Station KZAM to specify Channel 237C2 in lieu of its present Channel 237A. In accordance with Section 1.420(g) of the Commission's Rules, the Commission will not accept competing expressions of interest in the use of Channel 237C2 at Creswell.

3. We believe the public interest would be served by proposing the substitution of Channel 237C2 for Channel 237A at Creswell since it could provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Creswell, Oregon	237A	237C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Peter A. Casciato
750 Battery Street, Suite 340
San Francisco, California 94111
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-588

In the Matter of

Amendment of Section 73.202(b), RM-6107
Table of Allotments,
FM Broadcast Stations.
(University Park, Pennsylvania)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by State College Communications Corp. (petitioner), requesting the substitution of Channel 246A for Channel 244A at University Park, Pennsylvania, and the modification of its license for Station WQWK(FM) to specify the new channel.

2. Petitioner submits that in order to reduce the combined AM and FM radiation which it states is uncomfortably close to maximum permissible levels at Station WQWK(FM)'s present site, it recently sought a construction permit to move its transmitter to a more advantageous site. However, this application was dismissed because it would increase the short-spacing to Station WJNL-FM, Johnstown, Pennsylvania. Although petitioner was advised that it could resubmit its application with a more detailed showing on certain issues, it believes that it would be more expeditious to seek the modification of its license to second adjacent Channel 246A since that channel does not pose any short-spacing problems. Petitioner states that it desires to co-locate Station WQWK(FM)'s transmitter at the site of co-owned Station WRSC(AM)'s nighttime antenna.

3. Channel 246A can be allocated to University Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) west which will accommodate petitioner's desired site. Canadian concurrence in the allotment is required since University Park is located within 320 kilometers (200 miles) of the U.S.- Canadian border.

4. In accordance with petitioner's request, we shall also propose to modify its license to specify operation on Channel 246A. The procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984), and Section 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated.

5. We believe the public interest would be served by proposing the substitution of Channel 246A for Channel 244A at University Park since it could provide the community with improved local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
University Park, Pennsylvania	244A	246A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Louis Schwartz, Esq.
Lawrence M. Miller, Esq.
Schwartz, Woods & Miller
Suite 206, the Palladium
1325 Eighteenth Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-587

In the Matter of

Amendment of Section 73.202(b), RM-6111
Table of Allotments,
FM Broadcast Stations.
(Byng, Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the petition for rule making filed by Don Carmichael (petitioner), requesting the allocation of Channel 261C2 to Byng, Oklahoma, as the community's first local FM service. Petitioner states that he will apply for the channel, if allocated. Channel 261C2 can be allocated to Byng in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to Station KTCS-FM, Fort Smith, Arkansas.

2. We believe the public interest would be served by proposing the allocation of Channel 261C2 to Byng, Oklahoma, since an interest in providing the community with its first local service has been expressed. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Byng, Oklahoma	--	261C2

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Don Carmichael
P.O. Box 1258
Ada, Oklahoma 74820
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-586

In the Matter of

Amendment of Section 73.202(b),	RM-6005
Table of Allotments,	
FM Broadcast Stations.	
(Hutchinson, Kansas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 1987; Released: January 8, 1988

By the Chief, Allocations Branch:

1. At the request of KWHK Broadcasting Co., Inc. (petitioner), the Commission has before it a petition for rule making proposing the allotment of Channel 246A to Hutchinson, Kansas as that community's third FM channel. Petitioner has furnished information in support of the proposal and stated its intention to apply for the channel, if allotted. The channel can be allocated consistent with the Commission's minimum separation requirments.

2. In view of the fact that the proposed allocation could provide a third FM service to Hutchinson, Kansas, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with regard to the following community:

	Channel No.	
City	Present	Proposed
Hutchinson, Kansas	271C, 275C	246A, 271C 275C

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

KWHK Broadcasting Co., Inc.
525 North Main
P.O. Box 1967
Hutchinson, Kansas 67504-1967
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-303

In the Matter of

Amendment of Section 73.202(b), RM-5744
Table of Allotments,
FM Broadcast Stations.
(Santa Rosa, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 21, 1987; Released: January 13, 1988

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 4720 (1987), issued in response to a petition filed on behalf of Visionary Radio Euphonics, Inc. (petitioner), licensee of Station KVRE-FM (Channel 269A), Santa Rosa, California, seeking the substitution of Channel 269B1 for Channel 269A and modification of its license accordingly to specify operation on the higher class channel. Petitioner filed supporting comments reaffirming its intentions. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 269B1 for Channel 269A at Santa Rosa, California, since it could provide the community with its first wide coverage area FM service. As indicated in the *Notice*, Channel 269B1 can be allotted to Santa Rosa consistent with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules, provided the transmitter therefor is sited in an area approximately 6.28 kilometers northwest[1] of the community to avoid short-spacing to Station KKIQ(FM) (Channel 269A), Livermore, California.[2]

3. In view of the above, we believe this proposal is in the public interest. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station KVRE-FM to specify operation on Channel 269B1 at Santa Rosa, California.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **February 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Santa Rosa, California, as follows:

City	Channel No.
Santa Rosa, California	261A,269B1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Visionary Radio Euphonics, Inc. for Station KVRE-FM, Santa Rosa, California, IS MODIFIED effective **February 22, 1988,** to specify operation on Channel 269B1 in lieu of Channel 269A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Visionary Radio Euphonics, Inc., P.O. Box 1712, Santa Rosa, CA 95402, and by regular mail to petitioner's counsel, Peter A. Casciato, Esq., 750 Battery Street, Suite 340, San Francisco, CA 94111.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The *Notice* inadvertently listed the required site restriction at 6.28 kilometers northeast of the community.

[2] The 138 kilometer minimum distance separation required between A-B1 co- channels is met based upon the recent grant of a license to cover the construction permit of Station KKIQ(FM) (BLH-871016KE). Thus, the contingency previously attached to the instant proposal in the *Notice* has been removed.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-234

In the Matter of

Amendment of Section 73.202(b),	RM-5745
Table of Allotments,	
FM Broadcast Stations.	
(Palestine, Texas)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 14, 1987; Released: January 12, 1988

By the Chief, Allocations Branch:

1. At the request of Hawthorne Broadcasting Company, Inc. (petitioner), licensee of Station KNET-FM,[1] Channel 252A at Palestine, Texas the Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 3938 (1987), proposing the substitution of Channel 252C2 for Channel 252A at Palestine and modification of the station license to specify operation on the higher class channel. Petitioner filed supporting comments reiterating its intention to upgrade the station's facilities. No other comments were received.

2. The co-channel substitution can be made consistent with the Commission's minimum distance separation requirements with a site restriction of 28.7 kilometers (17.8 miles) north of Palestine. The restriction is necessary in order to avoid short spacings to a construction permit for Station KORA-FM, Channel 252A, Bryan, Texas and Station KRWR(FM), Channel 249A, Rusk, Texas.

3. We believe the public interest would be served by the substitution of Channel 252C2 for 252A at Palestine, Texas, providing that community with its first wide coverage area FM service. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the construction permit of Station KNET-FM to specify operation on Channel 252C2.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **February 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Palestine, Texas	244A, 252C2

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KNET-FM, Palestine, Texas, IS MODIFIED, to specify operation on Channel 252C2 in lieu of Channel 252A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Formerly Station KYYK-FM.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-324

In the Matter of

Amendment of Section 73.202(b),	RM-5395
Table of Allotments,	RM-5589
FM Broadcast Stations.	
(Burnet and Mason, Texas)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 21, 1987; Released: January 12, 1988

By the Chief, Allocations Branch:

1. Pursuant to the request of Donald L. Freed (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 51 FR 29129, August 14, 1986, proposing the allotment of Channel 223A to Burnet, Texas, as that community's second FM channel. In response to the *Notice*, Bruce G. Hughes (Hughes) filed a counterproposal for a Class C2 Channel 223 at Mason, Texas.[2] Supporting comments were filed by Broadcasters Unlimited, Inc. (BUI), in which it expressed an interest in the channel at Burnet. Hughes submitted a statement in support of its counterproposal. Petitioner failed to file comments reiterating his intention to apply for the channel at Burnet, therefore, we shall proceed with the Burnet proposal at BUI's request.

2. The proposals are mutually exclusive because the two communities are separated by less than the required spacing of 163 kilometers (101 miles) for co-channel Class A to C2 allotments. Therefore, we conducted a channel search to determine the availability of an alternative channel at either community to resolve the conflict. Our engineering study reveals that Channel 250C2 is available for allotment at Mason in compliance with the Commission's minimum spacing requirements with a site restriction of 10.6 kilometers northwest of the city. The site restriction is necessary in order to avoid a short spacing to Channel 251C1 at Austin. Channel 223A can be allotted to Burnet consistent with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) northwest of Burnet to avoid short spacings to new allotments at Killeen, Texas (Channel 222A) and Elgin, Texas (Channel 223A).

3. Since the communities are located within 320 kilometers (199 miles) of the common U.S.-Mexico border, concurrence of the Mexican government has been obtained.

4. We believe the public interest would be served by the allotment of Channel 223A to Burnet, Texas and Channel 250C2 to Mason, Texas, in order to provide a second FM service to Burnet and a first FM service to Mason. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **February 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Burnet, Texas	223A, 296A
Mason, Texas	250C2

5. The window period for filing applications will open on **February 23, 1988,** and close on **March 24, 1988.**

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Mason, Texas, has been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on October 8, 1986, Report No. 1622.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-470

In the Matter of

Amendment of Section 73.202(b),	RM-5440
Table of Allotments,	RM-5762
FM Broadcast Stations.	RM-5763
(Lake Lorraine and Niceville,	
Florida, and Evergreen, Alabama)[1]	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 1987; Released: January 12, 1988

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 1 FCC Rcd 1330 (1986), proposing the allotment of Channel 227A to Lake Lorraine, Florida, as its first FM service at the request of Michael J. Pollack (petitioner). A counterproposal in the proceeding filed by Emerald Coast Broadcasting requested Channel 227A for allotment to Niceville, Florida. In a *First Report and Order*, alternate Channel 262A was allotted to Niceville, Florida, in lieu of Channel 227A.[2] Comments in opposition to the Lake Lorraine allotment were filed by Emerald Coast Broadcasting (Emerald), and by Vacationland Broadcasting Company, Inc. (Vacationland).

2. The comments of Emerald suggests that Lake Lorraine lacks the requisite indicia for community status. Emerald argues that although Lake Lorraine is listed in the 1980 U.S. Census, it is not a city, and provides no benefits to those residing within its boundaries. Emerald describes Lake Lorraine as an area without a school, hospital, post office, library or business district. Municipal services to Lake Lorraine are said to be provided by Okaloosa County. Vacationland agrees with Emerald's contention, further noting that the petitioner possibly relied on the inclusion of Lake Lorraine in the U.S. Census, as justification of community status. Vacationland cited *North Naples, Florida*, 41 RR 2d 1549 (1977), where the Commission determined that a Bureau of Census listing was not conclusive for an allotment, and *Cascade Village, Colorado*, 48 Fed. Reg. 19917 (1983), where the community lacked the traditional components necessary for community status, such as a post office, library, schools, shopping center, church, newspaper, and social or civic organizations. Petitioner did not respond to the allegations regarding community status. Thus, we cannot allot the requested channel (227A) to Lake Lorraine absent further demographic data demonstrating that the area is a "community".

3. In relevant part, Section 307(b) of the Communications Act of 1934, as amended, requires the Commission to distribute broadcast frequencies among the several states and communities. A community for allotment purposes has been defined as an identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census (as here) that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allotment purposes. *See Ansley, Alabama*, 46 Fed. Reg. 58688 (1983); and *Ellwood, California*, 50 Fed. Reg. 13031 (1985). Lake Lorraine is listed in the U.S. Census as an incorporated community. However, opponents have raised sufficient doubt as to the absence of community's indicia. Since the *Notice of Proposed Rule Making* did not request comments on this issue, we shall afford petitioner this opportunity to demonstrate whether Lake Lorraine has any businesses, social organizations or governmental units that identify themselves therewith.

4. In view of the foregoing, we believe that the public interest would be served by our soliciting further comments on the proposal to amend the FM Table of Allotments Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Lake Lorraine, Florida	--	227A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **February 29, 1988,** and reply comments on or before **March 15, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lewis I. Cohen
Cohen and Berfield, P.C.
1129 - 20th Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed

at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Niceville, Florida and Evergreen, Alabama, were added to the caption as counterproposals. Public Notice was given on March 3, 1987, Report 1645.

[2] The request for Channel 227C2 at Evergreen is being considered in Docket 87-451.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-198

In the Matter of

Amendment of Section 73.202(b),	RM-5711
Table of Allotments,	RM-6060
FM Broadcast Stations.	RM-6061
(Baldwinsville, Crogan, McGraw	RM-6062
and Ellisburg, New York)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 17, 1987; Released: January 12, 1988

By the Chief, Allocations Branch:

1. At the request of Buckley Broadcasting Corporation of New York (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 3563 (1987), proposing the substitution of Channel 221B1 for Channel 221A at Baldwinsville, New York, and the modification of its license for Station WSEN to specify the higher powered channel. Petitioner filed comments reaffirming its intention to apply for the channel, if allocated. Three separate counterproposals were filed by Grover H. Hubbell (Hubbell) requesting the allocation of Channel 221A to Crogan, New York, Channel 222A to McGraw, New York, and Channel 222A to Ellisburg, New York, as each community's first local FM service.[2] Daniel L. Deeb (Deeb) filed comments stating his intention to apply for Channel 222A at McGraw, if allotted, but later withdrew his interest. Subsequently, Hubbell also withdrew his interest in each of the channel allotments at McGraw, Crogan and Ellisburg. [3] No other comments were received.

2. Channel 221B1 can be allocated to Baldwinsville in compliance with the Commission's minimum distance separation requirements and can be used at Station WSEN's present transmitter location. Concurrence by the Canadian Government has been received since Baldwinsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. We believe the public interest would be served by substituting Channel 221B1 for Channel 221A at Baldwinsville since it could provide the community and the surounding area with expanded radio service. As proposed, we shall also modify the license of Station WSEN to specify operation on Channel 221B1.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **February 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Baldwinsville, New York	221B1

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Buckley Broadcasting Corporation of New York for Station WSEN, IS MODIFIED effective **February 22, 1988,** to specify operation on Channel 221B1, in lieu of Channel 221A, at Baldwinsville, New York, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That the counterproposals filed by Grover Hubbell to allocate Channel 221A to Crogan, New York, Channel 222A to McGraw, New York, and Channel 222A to Ellisburg, New York, ARE DISMISSED due to a lack of continuing interest.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Crogan, McGraw and Ellisburg, New York, have been added to the caption.

[2] Public Notice of the filing of these counterproposals was given on August 24, 1987, Report No. 1673.

[3] Paragraph 2 of the *Notice of Proposed Rule Making* and paragraph 2 of the Appendix thereto states that the Commission will not allocate a channel absent an expression of continuing interest. Here, there is no party which remains interested in activating a channel at any of the counterproposed communities. Therefore, these proposals will not be considered further.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-470

In the Matter of

Amendment of Section 73.202(b),	RM-5440
Table of Allotments,	RM-5762
FM Broadcast Stations.	RM-5763
(Lake Lorraine and Niceville, Florida, and Evergreen, Alabama)[1]	

FIRST REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 8, 1987; Released: January 12, 1988

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 1 FCC Rcd 1330 (1986), which proposed to allot Channel 227A to Lake Lorraine, Florida, as its first FM service, at the request of Michael J. Pollack (petitioner). Joint comments were filed by Marion Radio, Inc., permittee of Station WJAM-FM, Marion, Alabama, and T and W Communications Corp., licensee of Station WACR(FM), Columbus, Mississippi, by Vacationland Broadcasting Company, Inc. (Vacationland), and by the petitioner restating his interest in Channel 227A at Lake Lorraine. Emerald Coast Broadcasting (Emerald)[2] filed comments and a counterproposal [3] seeking the allotment of Channel 227A to Niceville, Florida.[4] Reply comments were filed by Emerald.[5]

2. Emerald, in its counterproposal, alleges that Lake Lorraine lacks the requisite indicia for community status. Emerald argues that although Lake Lorraine is listed in the 1980 U.S. Census, it is not a city, and provides no benefits to those residing within its boundaries. According to Emerald, Lake Lorraine has no schools, no hospital, no post office, no library or business district, and its municipal services are provided to the community by Okaloosa County.

3. The joint comments of Marion Radio and T and W, and the comments of Vacationland, support an FM allotment to either Lake Lorraine or Niceville, Florida. Vacationland agrees with Emerald's contention that Lake Lorraine is not a community, noting that the petitioner possibly relied on the inclusion of Lake Lorraine in the U.S. Census, as justification of community status.

4. The petitioner did not respond to these allegations. Therefore, inasmuch as the question of community status has not been answered, we cannot allocate the channel absent further demographic data demonstrating that the area is a "community" for allotment purposes.

5. Emerald, in its reply comments, submits that alternate Channel 262A can be allotted to Niceville in compliance with the spacing requirements, which would avoid the conflict for Channel 227A.

6. The Commission also acknowledges the mutually exclusive request of Mac Carter for a first FM service on Channel 262C2 at Georgiana, Alabama. Carter's initial proposal was filed as a counterproposal for Channel 262A at Georgiana in Docket 86-455. In supplemental comments (May 18, 1987), Carter requested the Commission to dismiss his counterproposal for Channel 262A and consider instead, allotting Channel 262C2 to Georgiana. While no motion for acceptance as a late filed pleading was requested, Carter's comments indicated his awareness of the conflicting alternate proposal for Channel 262A at Niceville. In justification of the late filed request for Channel 262C2, Carter argues that his filing was delayed until the short spacing to Dothan, Alabama, Channel 263A (Docket 86-277) had been eliminated by a proposed change in transmitter site. We should point out that the Commission's procedural rules do not contemplate the filing of counterproposals after the comment date. While it has been shown that Carter's request for Channel 262C2 at Georgiana, Alabama, conflicted with the Niceville proposal for Channel 262A, nonetheless it was not timely filed as a counterproposal (by or before February 19, 1987), and thus cannot be accepted for consideration in this proceeding and no comparative consideration with the Niceville proposal will be given.

7. Since it has been determined that alternate Channel 262A is available for allotment to Niceville, a comparative study for Channel 227A will not be necessary. However, we will not allocate Channel 227A to Lake Lorraine at this time, but instead, will issue a *Further Notice* in this proceeding requesting additional information in order to establish Lake Lorraine's community status.

8. We believe that the public interest would be served by allotting Channel 262A to Niceville, Florida, as the community's first local FM service. The allotment can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Rules. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **February 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Niceville, Florida	262A

9. The window period for filing applications will open on **February 23, 1988,** and close on **March 24, 1988.**

10. IT IS FURTHER ORDERED, That the late filed petition of Mac Carter proposing to allot Channel 262C2 to Georgiana, Alabama, IS HEREBY DISMISSED, as unacceptable.

11. IT IS FURTHER ORDERED, That the petition of Wolff Broadcasting for Channel 227C2 at Evergreen, Alabama, IS HEREBY DISMISSED in this proceeding to be considered in Docket 87-451.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communitiesof Niceville and Evergreen have been added to the caption.

[2] A petition for rule making was filed by Helen Louise Lee for Channel 227A at Niceville, Florida, prior to the release of the *Notice* on December 31, 1986, which was accepted as a counter-proposal. Thereafter, in response to the *Notice*, Lee incorporated as Emerald Coast Broadcasting, and submitted a second request for Channel 227A at Niceville. We have accepted the petition of Emerald Coast Broadcasting as superceding Lee's first request.

[3] A third counterproposal filed by Wolff Broadcasting Corp., licensee of Station WEGN-FM, Evergreen, Alabama, proposing Channel 227C2 as a substitute for Channel 228A at Evergreen, is being treated in a separate proceeding (Docket 87-451).

[4] Public Notice of the Niceville, Florida and Evergreen, Alabama counterproposals was given on March 3, 1987, Report 1645.

[5] On March 12, 1987, Wolff Broadcasting Corp., filed a *Motion for Extension of Time* to and including April 10, 1987 in which to respond to the counterproposals. That request was denied on March 19, 1987. Section 1.46(b) of the Rules allows two business days for the filing of comments after the Commission denies a timely motion to extend the date for filing responses and comments. Thus, we have accepted Emerald's reply comments of March 23, 1987, as being timely filed under the provision of Section 1.46(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-230

In the Matter of

Amendment of Section 73.504(a),	RM-4806
Table of Allotments,	RM-4852
Noncommercial Education	RM-4898
FM Broadcast Stations.	RM-5183
(Apple Valley, Palomar Mountain,	RM-5184
Long Beach, Riverside, and	
Thousand Oaks, California)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 4, 1987; Released: January 12, 1988

By the Chief, Policy and Rules Division:

INTRODUCTION

1. The Commission has before it: (1) the *Notice of Proposed Rule Making (Notice)* (50 Fed. Reg. 32896, published August 13, 1985) proposing to amend the Noncommercial Educational FM Broadcast Table of Allotments, Section 73.504(a) of the Commission's Rules, issued in response to three separate proposals filed by Apple Valley Educational Broadcasting Foundation (AVEBF) (RM-4806), by Family Stations, Inc. (Family) (RM-4852), and by California State University Long Beach Foundation (CSU) (RM-4898); (2) counterproposals filed by California Lutheran College (CLC) (RM-5183)[2] and by The Regents of the University of California (Regents) (RM-5184); [3] (3) the "Notice of Withdrawal from Rule Making" filed by Family; and (4) various comments, reply comments, and pleadings.

2. This case involves proposed noncommercial educational FM (NCE-FM) allotments at five California communities, situated within 199 miles (320 kilometers) of the United States-Mexican border (border area): (1) AVEBF's request to allot Channel 201A to Apple Valley; (2) CSU's request to upgrade from Channel 201A to Channel 201B1 at Long Beach; (3) CLC's request to allot Channel 201A to Thousand Oaks; (4) Regents' request to allot Channel 201A to Riverside; and (5) Family's request to allot Channel 201A to Palomar Mountain. All five proposals would provide noncommercial educational service. The Palomar Mountain, Apple Valley, and Long Beach proposals were before the Commission when it issued the *Notice* wherein it proposed two options. Under Option I, Channel 201A would be allotted at both Palomar Mountain and Apple Valley. Under Option II, Channel 201B1 would be substituted for Channel 201A at Long Beach. These options reflected the fact that although the Palomar Mountain and Apple Valley proposals were compatable with each other, each would be short-spaced to an allotment of Channel 201B1 at Long Beach. The Thousand Oaks and Riverside counterproposals were filed in response to the *Notice*. Subsequently, Family withdrew its Palomar Mountain proposal.

3. Disposition of the allotment requests in this proceeding is affected by the recent Commission action in MM Docket No. 87-140.[4] The conflicts among the various requests resulted from the prescriptions set forth in Section 73.207(b)(3) of the Commission's Rules. That section provided, in pertinent part, that, pursuant to the Mexican-United States Broadcasting Agreement,[5] domestic NCE-FM allotments located in the border area must be separated from Mexican allotments and from each other by specified distances. While action on the instant requests was pending, the Commission amended its Rules in Docket 87-140. As a result of those amendments, applicants for new NCE-FM stations and for upgrades of existing NCE-FM facilities in the border area can base their spacings on the non-overlap of predicted signal strength contours (contour method) with respect to domestic NCE-FM stations, provided the minimum separation requirements are satisfied with respect to Mexican and domestic commercial stations.[6] In other words, the authorization of new NCE-FM stations will henceforth be determined on a protected contour basis for the border area as it is with the rest of the country, and an NCE-FM applicant will not need to establish an allotment before applying for an authorization.

4. In light of the action in Docket 87-140, the allotment requests here are appropriately considered in the application, as opposed to the allotment, context. Although the parties requested exemption of their requests from the effects of the action in Docket 87-140, the Commission determined that pending allotment proceedings for the border area are not immune from the effects of the rule amendments, and those requests were denied. *See* footnote 4 of the *Report and Order* in Docket 87-140.

5. Accordingly, IT IS ORDERED, That the Petitions for Rule Making filed by Apple Valley Educational Broadcasting Foundation and by California State University Long Beach Foundation and the counterproposals filed by California Lutheran College and by The Regents of the University of California ARE DISMISSED.

6. For further information concerning this proceeding, contact Joel Rosenberg, Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Thousand Oaks and Riverside have been added to the caption.

[2] Public Notice was given on October 11, 1985.

[3] *Id.*

[4] *Report and Order, Review of Technical and Operational Requirements : Part* 73-C Noncommercial Educational FM Broadcast Stations, 52 FR 43764, November 16, 1987.

[5] "Agreement between the United States of America and the United Mexican States Concerning Frequency Modulation in the 88 to 108 MHz Band," ratified in Washington, D.C., November 9, 1972. Pertinent provisions of the agreement are contained in 47 CFR Sections 73.207 and 73.504. *See* , Report and Order in Docket No. 19987, 50 FCC 2d 172 (1974).

[6] *See* Section 73.207 of the Commission's Rules. As a corollary, the Commission eliminated its Table of Allotments for NCE-FM facilities in the border area previously set forth in Section 73.504.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD-7-1678

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 1987; Released: January 12, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. In the *Joint Cost Order*,[1] the Commission adopted standards that certain subject carriers, including the NYNEX Telephone Companies (NYNEX),[2] are to follow in separating the costs of regulated telecommunications services from the costs of nonregulated activities, and in determining the costs of transactions between regulated and nonregulated affiliates. The Commission required the NYNEX operating companies to file cost allocation manuals incorporating these standards by September 1, 1987. The manuals were to be based on the new Uniform System of Accounts (USOA), [3] and subject to public comment and our review prior to implementation.[4] The Commission intended that we complete the review process in time for implementation of the manuals to occur concurrently with the implementation of the new USOA on January 1, 1988.[5]

2. In response to these requirements, NYNEX filed a manual on behalf of its telephone operating companies on August 14, 1987. The manual includes descriptions of NYNEX's nonregulated activities, a list of the activities NYNEX proposes to treat as incidental activities, information on affiliate transactions, information on employee time reporting procedures, and information on how NYNEX proposes to allocate the amounts recorded in USOA accounts and subaccounts between regulated and nonregulated activities. As part of its cost allocation proposals, NYNEX requests a waiver of Section 64.901(b)(4) of the Commission's Rules[6] permitting it to allocate line director equipment investment recorded in Account 2212 (Digital electronic switching) based on two-year usage forecasts rather than forecasts extending to the depreciable life of the equipment.

3. Three parties commented on NYNEX's manual,[7] and NYNEX replied to the comments. In addition to considering the pleadings, we have reviewed the manual for consistency with Commission rules and policies. This review has revealed a number of areas NYNEX will have to clarify or change, and we discuss each of these areas in this *Order*. We determine that, despite these areas, the manual makes NYNEX's cost allocation proposals sufficiently clear to let us assess the potential for cross-subsidy. We conclude that the manual provides adequate assurances against the misallocation of costs and revenues to permit its implementation on January 1, 1988. Our approval of NYNEX's manual is conditioned upon (a) the filing, within sixty days of the release of this *Order*, of a revised manual responding to the requirements stated in this *Order* ; and (b) whatever action, if any, we may deem necessary or appropriate in light of the amendments NYNEX files. NYNEX is also required to make its revised manual effective as of January 1, 1988.[8]

4. This *Order* has three substantive sections. Section II discusses the overall sufficiency of the manual as well as the portions of the manual that purport to describe NYNEX's nonregulated activities, incidental activities, affiliate transactions, and time reporting procedures. Section III discusses NYNEX's proposed cost allocation methods. Section IV discusses procedural matters related to the cost manual, including procedures for the amending and updating the manual.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manual

5. In the *Joint Cost Order*, the Commission determined that each cost allocation manual must contain certain information regarding the operating telephone company's nonregulated activities, incidental activities, corporate affiliates, affiliate transactions, cost allocation procedures, and time reporting procedures. While NYNEX's manual purports to provide that information,[9] MCI contends that the manual lacks the level of detail necessary for effective review. In particular, MCI states that NYNEX should identify and justify the accounting reporting codes, accounting records, and records of charges to accounts it

uses to establish cost pools. As a consequence, MCI argues, the Commission will be unable to review, audit, and oversee NYNEX's cost pooling processes. MCI contends that NYNEX's cost allocation proposals are similarly flawed. In MCI's view, this problem is particularly serious in relation to digital electronic equipment. MCI states that NYNEX should be required to describe the continuing property records it is proposing to use to allocate investment associated with that equipment as well as the reporting codes and functional accounting records it is proposing to use to allocate expenses associated with that equipment.[10]

6. In response, NYNEX contends that its manual provides sufficient information for the Commission to determine whether NYNEX's cost pools are reasonable and whether the allocation methods to be applied to those cost pools are appropriate. NYNEX believes that the information MCI seeks would add unnecessary detail to this cost allocation manual and would exceed that required in the *Joint Cost Order*. NYNEX states that its manual necessarily relies on the basic data, records, and function codes that underlie its operating companies' general accounting ledgers and financial reports. According to NYNEX, this information is continually audited and MCI's arguments amount to a baseless attack on the reliability of NYNEX's financial records.[11]

7. Although we are not certain that the level of detail MCI seeks is consistent with the level of detail the Commission has required, we cannot accept NYNEX's position that its manual provides all the detail needed for effective audits and Commission oversight. Our responsibility is to understand how NYNEX's manual would work and whether it would create a potential for improper cost shifting between regulated and nonregulated activities. To discharge this responsibility, we must determine whether the manual addresses each of the subject-matter areas required by the Commission, and whether the manual makes clear how cost categories are formulated and how costs are apportioned between regulated and nonregulated activities.

8. In general, NYNEX's manual meets the Commission's requirements. We are concerned, however, that many sections of the manual are ambiguous or insufficiently detailed, and that inconsistent interpretations by the Commission, NYNEX, and the independent auditors are possible. This concern arises principally in relation to NYNEX's cost allocation tables. In the *Joint Cost Order*, the Commission established a costing methodology under which the amounts recorded in USOA accounts or subaccounts are to be apportioned into homogeneous cost categories or pools, which in turn are to be assigned to, attributed to, or allocated between regulated and nonregulated activities.[12] The Commission determined that the number of cost pools each carrier should use should reflect the extent of the carrier's involvement in nonregulated activities, the cost of adding additional pools, and the impact the additional pools would have on the accuracy of cost allocation results.[13] The Commission stated that cost categories should not be so numerous as to preclude the orderly administration of the manual over time.[14] The Commission also determined that carriers should directly assign costs to regulated and nonregulated activities wherever possible. Those costs which cannot be directly assigned are to be attributed to, or allocated between, regulated and nonregulated activities using factors reflecting cost causality.[15]

9. Our review of NYNEX's manual has focused on whether NYNEX's proposals properly reflect these criteria. We are concerned that the cost pools NYNEX proposes for certain accounts as well as the procedures NYNEX states it will use to apportion costs into pools and to allocate particular pools between regulated and nonregulated activities are, in a number of specific instances, ill-defined. We believe that these problems can be cured by the submission of additional, and in certain instances, corrected information; and the subsequent portions of this *Order* direct NYNEX to amend its manual in various respects. The need for these amendments, however, does not require rejection of the manual. We believe that the best procedure is to permit NYNEX to implement its manual on January 1, 1988, while requiring NYNEX to revise its manual and make the revised manual effective as of that implementation date. Our approval of the manual is conditioned upon the timely submission of a revised manual responsive to the matters discussed in this *Order*.[16]

B. Description of Nonregulated Activities

10. In the *Joint Cost Order*, the Commission determined that cost allocation manuals should describe each of the nonregulated activities in which the subject telephone operating companies engage.[17] In response to this requirement, NYNEX listed as its nonregulated activities: (a) the installation and maintenance of inside wiring; (b) the provision of inside wiring maintenance and loaner telephones under customer service plans that require the payment of a monthly fee; (c) the protocol conversion element of its Infopath packet switching service; (d) the leasing of space on public telephone booths by NYT; and (e) planning for enhanced services and customer premises equipment (CPE) activities.

11. The Commission's cost allocation rules require that tariffed services provided to nonregulated activities be charged to the nonregulated activities at the tariffed rates.[18] NYNEX's descriptions of the costing methods proposed for the inside wiring maintenance and loaner telephones operations it conducts under customer service plans and for its protocol conversion operations reflect this requirement. The descriptions state that tariffed services used in the provision of these services will be taken at tariff rates. Although that costing method is entirely proper, it appears that NYNEX's other nonregulated activities may also use tariffed services. NYNEX is directed to amend its manual to state that these other nonregulated activities will take tariffed services at tariff rates, as required by the *Joint Cost Order*.

12. In the *Second Report and Order* in Docket No. 79-105[19] the Commission preemptively detariffed the installation and maintenance of inside wiring. In the *Inside Wiring Reconsideration Order*,[20] the Commission affirmed that preemptive action. However, to avoid possible adverse consequences on consumers in the State of New York, the Commission deferred its preemption decision for inside wiring maintenance services in that state until January 1, 1990.[21] The deferral did not alter federal regulation of inside wiring maintenance within the State of New York.[22] Under the *Joint Cost Order*, exchange carriers operating in that state are required to account for their inside wiring maintenance operations, as well as all their other inside wiring operations, as nonregulated activities.[23]

13. NYNEX's manual states that NYT's inside wiring maintenance operations in the State of New York will be conducted under tariff until January 1, 1990. The manual, however, does not state explicitly that NYT will account for these tariffed operations as nonregulated activities. To avoid any potential for future confusion on the part of the persons who will apply the manual, NYNEX is directed to amend its descriptions of its inside wiring maintenance operations, including those that it conducts under customer service plans, to state that NYT will account for them as nonregulated activities.

C. Incidental Activities

14. In the *Joint Cost Order*, the Commission recognized that carriers engage in a number of miscellaneous nonregulated activities that have traditionally been treated as regulated activities for accounting purposes as a matter of convenience. These incidental activities are outgrowths of regulated operations, and typically generate very small costs and revenues in relation to the carrier's overall costs and revenues. The *Joint Cost Order* permitted carriers to continue to account for incidental activities as regulated activities, but required carriers to list these activities in their manuals. Carriers were also required to justify treating these activities as incidental. To qualify for incidental treatment, an activity must be an outgrowth of regulated operations, cannot constitute a separate line of business, and must have been traditionally treated as regulated for accounting purposes by the carrier claiming incidental treatment. The aggregate revenue from all incidental activities in which a carrier engages shall not exceed one percent of the carrier's total revenues.[24]

15. While the Commission does not require carriers to explain in detail why their incidental activities meet the above criteria, each manual must provide sufficient information to enable us to determine the nature and scope of each activity proposed for incidental treatment.[25] NYNEX's manual generally provides the necessary information. However, NYNEX's manual does not make clear the scope of NYNEX's "Custom Work" activity. The manual also fails to describe the scope of the land and building rental and leasing operations NYNEX proposes to conduct under "Miscellaneous Rentals and Leases." NYNEX must amend its manual to include this additional information.

D. Affiliate Transactions

16. The *Joint Cost Order* adopted specific rules governing affiliate transactions. The rules were intended to keep carriers from avoiding the cost allocation rules, and the investment risk balance created by those rules, by engaging in transactions in which the carriers provide assets or services to affiliates at prices below the carriers' costs, or obtains assets or services from affiliates at prices above the affiliates' costs.[26] Rules governing transactions between a carrier and its affiliate differ depending on the nature of the transaction.[27] If the affiliate transaction involves a transfer of assets, the carrier should record it at the prevailing price held out to the general public, *i. e.*, the prevailing company price. If there is no prevailing company price, asset transfers from the affiliate to the carrier should be recorded at the *lower* of net book cost or fair market value, while asset transfers from the carrier to the affiliate should be recorded at the *higher* of net book cost or fair market value. In the case of services, the prevailing company price also determines the amount to be recorded in the carrier's accounts. If no prevailing price is available, the cost of the service should be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules.[28] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[29]

17. In its manual, NYNEX lists fourteen affiliates that engage in transactions with its telephone operating companies. For the most part, the terms NYNEX proposes for these transactions appear to be consistent with the affiliate transaction rules. We nevertheless have identified several areas of concern that we will address below, along with the issues raised by the commenting parties.

18. *Prevailing Company Prices.* NYDPS argues that goods and services provided by affiliates should be provided at cost, as required by state law, rather than at prices calculated in accordance with the Commission's affiliate transactions rules. NYDPS maintains that any methodology that is not cost based would be unworkable. According to NYDPS, regulators will never be able to verify that the same goods and services are provided to the operating companies and to the general public at the same prices.[30] NYNEX contends that NYDPS' position is inconsistent with the *Joint Cost Order* and that the existence of market prices for arm's length transactions will provide an ascertainable check on the reasonableness of the affiliates' prices.[31]

19. The affiliate transaction rules permit carriers to use prevailing company prices to determine the prices of certain types of affiliate transactions. Since NYPDS's proposal is inconsistent with that pricing method, we must reject it. We note, however, the Commission has found that carrier compliance with this pricing mechanism will be "readily verifiable and simple to audit."[32] In addition, NYDPS will be free to use alternate means of treating affiliate transactions in its regulation of intrastate rates for common carrier communication services.[33] Therefore, our rejection of NYDPS' position will create no conflict with state law.[34]

20. *Reciprocal Services Contracts.* NYNEX's telephone operating companies have entered into a series of reciprocal service contracts with their corporate affiliates. The manual states that NYNEX Service Company (NYNEX Service) maintains these contracts and that the operating companies provide reciprocal services to corporate affiliates through NYNEX Service. While the manual lists thirteen reciprocal services that the operating companies apparently provide in this manner and the eleven corporate affiliates to which they are provided, the manual does not state which of the listed reciprocal services each of the listed affiliates receives. Nor does the manual specify the frequency with which the operating companies provide these services to particular affiliates. NYNEX is directed to amend its manual to provide this information on an affiliate-by-affiliate basis for each of the reciprocal services its operating companies provide.

21. The manual also fails to state whether NYNEX's operating companies receive any services under reciprocal service contracts, even though the term "reciprocal services" implies the operating companies may be receiving such services. NYNEX must clarify this point in its revised manual. If the operating companies receive reciprocal services either directly or indirectly, the revised manual shall

provide, for each such service and for each affiliate that provides it, the nature, terms, and frequency of the service's provision.

22. *Status of Bell Communications Research, Inc. (Bellcore).* NYNEX's manual also states that the Service Company holds and votes NYNEX's shareholder interests in Bellcore, and that the Service Company provides "Bellcore liaison" for NYNEX's operating companies. The manual, however, does not list Bellcore as a company that engages in affiliate transactions with the operating companies. Consistent with our decision in the *Ameritech Order*, NYNEX shall amend its manual to include Bellcore as an affiliate, and provide all the necessary information about its transactions with Bellcore.[35]

23. *Sales Agency.* The manual states that NYNEX Business Information Systems Company (BISC) acts as the operating companies' non- exclusive sales agent for marketing network services to business customers. NYNEX states that BISC's marketing activities are conducted under sales agency plans whose terms are "based on value of services performed."[36] NYNEX proposes to use those terms to determine the costs of the marketing services BISC provides to the operating companies. This proposal is inconsistent with the Commission's requirement that all services affiliates perform for carriers, including those which may have been provided under sales agency plans, be provided in accordance with the costing methodology set forth in the affiliate transaction rules.[37] NYNEX should amend its manual to specify that the costing methodology of the affiliate transaction rules will be applied to BISC's marketing activities.

24. *Nature of Transactions.* NYNEX's manual indicates that all of its operating companies' affiliate transactions involve the provision of services rather than asset transfers. NYNEX generally describes these transactions in sufficient detail to let us discern their overall nature and to verify NYNEX's statement that no asset transfers are involved. We have been unable to make these determinations, however, with regard to the operating companies' "Lease rental" transactions with NYNEX Corporation, "Space rental" and "Motor vehicle" transactions with NYNEX Service, and "Real estate services, e.g., acquisitions, property disposal" and "Space rental" transactions with NYNEX Properties Company. NYNEX is directed to make clear in its revised manual its basis for concluding that these transactions involve only the provision of services. NYNEX should provide similar information with regard to each of the services provided under reciprocal services contracts.[38]

25. *Terms of Transactions.* As indicated previously,[39] NYNEX's costing methods for its affiliate transactions generally appear to comply with the affiliate transaction rules. At different points in its discussion of affiliate transactions, NYNEX states that services will be provided "at fully allocated costs."[40] However, the manual proposes that the terms of the operating companies' "Lease rental" transactions with NYNEX Corporate be "*based on* fully allocated costs."[41] NYNEX is directed to state whether this costing methodology is the same as transactions " *at* fully allocated costs" and, if not, to explain the differences.

26. Similarly, NYNEX proposes to use "Market equivalent prices" as the cost of the engineering and materials management services NYNEX Materiel Enterprises Company provides the operating companies.[42] The Commission expressly rejected this costing methodology.[43] NYNEX must therefore amend its manual to comply with the Commission's rules.

27. NYNEX Information Resources Company (IRC) provides the operating companies with Yellow Page and White Page publication services as well as listing updates for the companies' directory assistance data base under agreements which, according to the manual, provide for prices "based on 1983 contribution of directory business adjusted for growth and price changes."[44] NYNEX proposes to use this costing methodology to determine its operating companies' costs for these services. This proposal appears to be inconsistent with the Commission's affiliate transaction rules. NYNEX is directed either to explain how its methodology complies with the rules or to revise its manual for these transactions.

28. IRC also "extract[s] . . . listing information for use as licensed by the NYNEX Telephone Companies."[45] The manual lists this service as a service IRC provides to the operating companies, but does not state the terms on which it is provided. NYNEX is directed to clarify in its revised manual whether IRC provides this listing service to the operating companies and, if so, to provide a costing methodology for this service that is consistent with the affiliate transaction rules.

29. According to the manual, the operating companies provide IRC with licensed use of listing information and with billing and collection services. The manual states that the price for this listing information service is " *based on* [the] market price," but does not state the terms on which the billing and collection service is provided.[46] First, we find this use of the phrase "based on" to be confusing. NYNEX is directed to clarify if "based on market price" means that the prevailing company price will be used, and if not, to propose a cost methodology that complies with the rules. Second, NYNEX's revised manual should propose a costing methodology for the billing and collection service provided to IRC that is consistent with the affiliate transaction rules.

30. NYNEX Properties Company (NYNEX Properties) provides the operating companies with real estate services at prices "based on prevailing market practices and conditions," with space rental at prices "based on direct pass through of landlord costs," and with building management services at prices "based on market prices." The phraseology selected by NYNEX to describe these affiliate transactions creates some ambiguity as to whether these methodologies comply with the rules. In its revised manual, NYNEX either should explain how these methodologies comply with the affiliate transaction rules or substitute revised methodologies that comply with the rules.

31. *Frequency of Transactions.* Carriers are required to state in their cost allocation manuals the frequency with which they engage in each of their affiliate transactions.[47] In lieu of complying with this requirement, NYNEX has stated the frequency at which its affiliates propose to bill for affiliate transactions. NYNEX shall amend its manual to comply with this requirement.

E. Time Reporting

32. Accurate time reporting by carrier employees is essential to the cost allocation process, because employee wages and salaries constitute a large portion of the carriers' overall costs and because carriers use wages and

salaries in a variety of contexts to attribute costs to, or allocate costs between, regulated and nonregulated activities. In the *Joint Cost Order*, the Commission decided that it would not mandate a specific form of time reporting. Instead, companies are free to employ positive time reporting, exception time reporting, or special studies to keep track of employee time. The Commission found that each of these methods would contribute to the accuracy of cost allocation results, and that one method could not readily be applied to all situations. The *Joint Cost Order* required that carriers describe in their manuals the methods they use to teach, monitor, and enforce accurate time reporting. In addition, carriers are required to describe their methods for capturing and allocating the costs of nonproductive time.[48]

33. To record employee time, NYNEX has elected to use two positive time reporting systems (Mechanized Work Reporting and Integrated Force Administrative/Mechanized System (IFAMS)), one exception time reporting system (Payroll Time Reporting), and one system that combines both positive and exception time reporting (Mechanized Time Reporting). Each of these systems employs reporting codes to determine the time spent on particular activities. In the positive time reporting systems, the employee's workday is divided into fifteen-minute increments. According to the manual, these systems require that the amount of time reported for a given day must equal the the sum of the increments reported against specific work activities. NYNEX's exception time reporting systems assign all *available* employee work time, for which an exception time report is not submitted, to predetermined work activities. The manual states that time spent on exception activities is recorded only if it exceeds one hour. With regard to nonproductive time, the manual states only that it "is captured and apportioned to regulated and nonregulated categories in relation to the reported productive time."[49]

34. NYDPS objects to NYNEX's time reporting procedures. NYDPS claims that NYNEX's systems are flawed because they rely on employee logs to allocate time between regulated and nonregulated activities. NYDPS states that the logging process is very susceptible to human error and that competitive concerns create a psychological bias against reporting time spent on nonregulated activities. NYDPS argues that NYNEX is proposing that all time worked in less than the applicable reporting increments (fifteen minutes for positive time reporting and one hour for exception time reporting) be allocated to regulated activities. NYDPS recommends that we require all time, including time worked in less than the applicable reporting increments, to be allocated to its proper category. Alternatively, NYDPS suggests that we should reduce the reporting increment for exception time reporting from one hour to fifteen minutes.[50]

35. NYNEX contends that its time reporting procedures are consistent with the *Joint Cost Order* and that time worked in less than the applicable reporting increments will not automatically be allocated to regulated activities. According to NYNEX, time shorter than the applicable reporting increment will be assigned to the employee's normal job function, apportioned to the cost pool to which that function relates, and allocated between regulated and nonregulated activities using the method specified in the manual for that cost pool.[51]

36. We find that, with certain specific exceptions, NYNEX's manual satisfies the Commission's requirements for employee time reporting. In the *Joint Cost Order*, the Commission decided that carriers should rely on employee time reporting to allocate labor costs.[52] Accordingly, we reject NYDPS's suggestion that NYNEX be required to develop entirely new procedures for allocating employee time. NYDPS's proposal that NYNEX should be required to use fifteen-minute reporting increments for exception time reporting is also inconsistent with the *Joint Cost Order*.[53] Nevertheless, we will monitor NYNEX's use of one-hour increments for exception time reporting to ensure that NYNEX's methodology does not lead to inaccurate results.[54]

37. Our review of the manual has verified that NYNEX's time reporting procedures will not result in the allocation of all time worked in less than the applicable reporting increments to regulated activities, and we reject NYDPS's argument to the contrary. We share NYDPS's concern, however, to the extent it relates to NYNEX's procedures for capturing and allocating nonproductive time. NYNEX's positive time reporting systems require only that "employees report time spent on work activities."[55] It is not clear how this procedure will permit NYNEX to capture nonproductive time. In addition, as indicated above,[56] NYNEX's exception time reporting procedures would result in the allocation of all *available* employee work time, for which an exception time report is not prepared, to the employee's normal work activity. NYNEX, however, has not made clear whether each of its exception time reporting systems require the preparation of exception time reports for all nonproductive time occurring in increments greater than one hour; and NYNEX has proposed no method for capturing nonproductive time occurring in lesser increments under these systems. NYNEX's revised manual must therefore state, for each of NYNEX's time reporting systems, the procedures NYNEX will use to capture and allocate the costs of nonproductive time.

38. We are also concerned about the scope of NYNEX's various time reporting systems. The manual states, for example, that all NET employees other than telephone operators are subject to the Mechanized Time Reporting system.[57] While this degree of coverage would be proper, a chart included in the manual indicates that nonmanagement personnel in the NET's marketing, advertising, and corporate operations organizations are not subject to time reporting.[58] Similarly, we have been unable to determine if any NYT employees would be exempt from time reporting under NYNEX's proposals. In its revised manual, NYNEX shall clarify the precise coverage of each of its time reporting systems.

III. COST ALLOCATION PROPOSALS

39. In its manual, NYNEX describes the methods it proposes to use to apportion costs into cost pools and to allocate the pools between regulated and nonregulated activities. NYNEX then provides a table, generally organized by USOA account, that reveals how its cost apportionment and cost allocation methods would isolate nonregulated costs. For the most part, NYNEX's methods are concise and understandable. However, our review of the cost table and the parties' comments has raised certain

issues relating to NYNEX's methods. We will address general issues before turning to issues relating to specific accounts.

A. Use of Company Subaccounts

40. NYNEX's cost pools generally follow its internal accounting system. That system uses reporting codes and other mechanisms to direct costs to subaccounts that NYNEX has established for its internal accounting purposes.[59] Whenever NYNEX divides USOA accounts into cost pools, the pools usually correspond to these company subaccounts. Although this procedure is not objectionable, we cannot determine whether the sum of the company subaccounts listed in the cost table for a given USOA account includes all amounts recorded in the USOA account from which the subaccounts are derived.

41. An example will help illustrate the nature of this problem. For Account 2116 (Other work equipment), NYNEX proposes four separate cost pools for special tools and work equipment, shop equipment, other tools and work equipment, and storeroom work equipment. According to the manual, these cost pools correspond with company subaccounts 2116.3, 2116.4, 2116.5, and 2116.6, respectively. From the information provided, we cannot determine if these subaccounts represent the totality of costs to be recorded in Account 2116. In its revised manual, NYNEX should state, for each USOA account that its cost table disaggregates into subaccounts not prescribed in the USOA, whether the listed subaccounts include all amounts recorded in the USOA account. In the event unlisted, company subaccounts include amounts recorded in the USOA account, NYNEX shall revise its cost table to include those amounts or explain why such inclusion is not required.

B. Procedures for Apportioning Costs into Pools

42. In certain accounts, NYNEX's cost pools correspond with neither the USOA accounts nor NYNEX's company subaccounts. NYNEX proposes to use a variety of methods to apportion costs into these cost pools. These methods will include, among other procedures, the "analysis", "review", or "survey" of charges to particular accounts,[60] building occupancy records,[61] computer investment records,[62] subaccount identifications,[63] function and reporting code identifiers,[64] functional accounting codes,[65] and functional work activity reports.[66]

43. In our discussion of MCI's argument regarding the overall sufficiency of the manual, we stated that we must understand the methods NYNEX intends to use to apportion costs into pools. [67] While we do not find it necessary to require NYNEX to identify and justify each of the accounting reporting codes, accounting records, and records of charges to accounts upon which it proposes to rely,[68] NYNEX has not made clear precisely what type of analysis, review, or survey it contemplates in relation to its various cost pool apportionment factors. Because we wish to ensure that the Commission, NYNEX, and the independent auditors share a common understanding of the manual, we direct NYNEX to describe the steps its employees will take to apply each of the methods it proposes to use to apportion amounts recorded in USOA accounts into cost pools. If any of the steps involves the sampling of charges to an account or of other records, NYNEX shall state the sample criterion it intends to employ.

C. Cost Allocation Factors

44. NYNEX's cost allocation factors also require clarification. Those factors specify that NYNEX will allocate particular cost pools "on the basis of combined distribution of"[69] "in same proportion as,"[70] "in proportion to,"[71] "in same proportion as combined distribution of,"[72] "based on distribution of,"[73] and "on distribution of"[74] a variety of accounts, cost pools, or cost allocation results. The manual, however, makes no attempt to distinguish among these apparently similar terms. In addition, the descriptions NYNEX provides of its allocation factors do not make clear precisely what processes NYNEX intends to follow in applying these terms. In its revised manual, NYNEX is directed to use a limited number of well-defined terms to describe its attribution and allocation processes.

45. In addition to clarifying its terminology, NYNEX must provide further information with respect to two groups of allocation factors that are based on wages and salaries. The first group uses the proportionate relationship of current wages and salaries in specified accounts to allocate costs between regulated and nonregulated activities.[75] NYNEX states that its functional accounting system will allow it to identify these wages and salaries.[76] However, for each of these factors, the specified accounts include at least one operating plant investment account. Since wages and salaries are recorded in these investment accounts only when incurred as part of a construction project and only after construction has been completed, NYNEX must explain this group of allocators.

46. The second group of allocation factors requiring explanation uses the distribution of wages and salaries in "final accounts" to allocate costs.[77] The accounts used to calculate these allocators also include investment accounts. Presumably, NYNEX is proposing to track wages and salaries that have been cleared from expense accounts to the investment accounts as costs associated with particular construction projects. NYNEX's description of its tracking capabilities, however, encompasses only current wages and salaries.[78] In its revised manual, NYNEX must state precisely how it will track these wages and salaries.

D. Protocol Processing

47. *Background*. As indicated above, one of NYNEX's nonregulated activities is the protocol conversion element of its regulated Infopath packet switching service. According to NYNEX, both the protocol processing and the packet switching service use portions of digital switching equipment that is dedicated to either the protocol function or the packet switching function. NYNEX therefore proposes to create dedicated regulated investment and dedicated nonregulated investment cost pools for digital switching equipment, and to assign the cost pools directly to regulated and nonregulated services.

48. NYNEX also states that its nonregulated protocol conversion and regulated packet switching services utilize shared digital equipment. This shared equipment consists of line director units within packet assemblers/disassemblers, and is recorded in Account 2212 (Digital electronic equipment).

49. NYNEX incurs a variety of expenses in connection with its protocol conversion and packet switching operations. Some of these expenses can be identified as sup-

porting exclusively either regulated or nonregulated activities. The manual assigns these expenses directly to regulated and nonregulated activities.

50. Other expenses NYNEX incurs in connection with its protocol processing and packet switching services benefit both services. These expenses fall into three general categories: investment-related operations expenses, marketing expenses, and customer service expenses.

51. *Period for Forecasting Peak Relative Nonregulated Usage.* In the *Joint Cost Order*, the Commission required that investment in shared digital equipment, like investments in other jointly-used network plant, should be allocated based on forecast peak relative nonregulated usage of the plant over its entire depreciable life.[79] NYNEX requests a waiver of this requirement. NYNEX proposes to allocate its investment in line director equipment that is used in connection with regulated packet switching operations as well as nonregulated protocol processing activities based on two-year usage forecasts rather than forecasts extending to the depreciable life of the equipment. NYDPS and IBM oppose this request. They argue that the proposed two-year forecast period would make ratepayers bear investment risks which NYNEX's shareholders should bear.[80]

52. Subsequent to the filing of NYDPS's and IBM's comments, the Commission's *Reconsideration Order* reduced the forecast period for jointly- used network plant to three years in recognition of the practical difficulties of forecasting usage over lengthy periods.[81] The Commission determined that carriers seeking to use shorter forecast periods would have to make a specific, detailed showing to justify their waiver requests.[82] In its reply, NYNEX does not address the waiver criteria. Instead, NYNEX states that it plans to withdraw its waiver request and to forecast usage of jointly-used network plant over the prescribed three-year period.[83] NYNEX, however, has not formally withdrawn its waiver request or amended its manual to specify use of a three-year forecast period. Because NYNEX has not met the Commission's requirements for use of a forecast period shorter than three-years, we will deny NYNEX's waiver request.[84] NYNEX shall amend its manual to reflect this action.

53. *Method for Measuring Usage of Shared Digital Equipment.* Section 64.901(b)(4) of the Commission's rules requires carriers to allocate their investment in shared central office equipment, such as the line director units NYNEX uses in its protocol processing operations, based on "the relative regulated and nonregulated usage of the investment during the year when nonregulated usage is greatest in comparison to regulated usage during the three consecutive years following the effective date of the current annual access charge filing."[85] NYNEX proposes to measure usage of the line director units by counting the relative number of asynchronous (*i. e.*, nonregulated protocol processing) and synchronous (*i. e.*, regulated packet switching) ports associated with the PADs. MCI objects to this proposal. MCI contends that the proposal is unjustified and that NYNEX should be required to identify the plant continuing property records on which its forecasts apparently will be based.[86] In response, NYNEX asserts that its shared digital equipment presently amounts to only $2 million and that its proposed usage measurement is proper.[87]

54. We are not convinced that NYNEX's method for measuring usage of line director units will produce accurate results.[88] The method appears to measure access to, rather than usage of, the line director units. It is not necessarily true, as NYNEX appears to assume, that the number of packets or information bits transmitted through asynchronous ports will be comparable to the number transmitted through synchronous ports. Further, NYNEX has not justified its proposed measurement by demonstrating that asynchronous packets and synchronous packets place identical demands on the line director units' processing capabilities. We find that NYNEX has not described its protocol processing and packet switching operations in sufficient detail to permit evaluation of NYNEX's assumptions. NYNEX must develop and justify a usage measurement for its line director units that is responsive to the concerns stated above. In its revised manual, NYNEX shall state the reasons why this new usage measurement responds to those concerns and, in the event NYNEX proposes to continue to employ the relative number of asynchronous and synchronous ports to measure line director unit usage, the justification, for that proposal.

55. *Treatment of Shared Expenses.* As indicated previously, NYNEX incurs investment-related operations expenses, marketing expenses, and customer service expense in connection with its regulated packet switching and nonregulated protocol conversion operations. NYNEX proposes to apportion its investment-related operations expenses and shared marketing expenses into shared Infopath cost pools "on the basis of unique reporting codes and functional accounting records."[89] NYNEX's customer service expenses would be apportioned into parallel cost pools "on the distribution of customer accounts (total Infopath accounts vs. total universe of customer accounts.[90] The manual states that cost pools for investment-related operations expenses would be allocated "in the same proportions as Infopath investment, distributed on an actual use basis.[91] The cost pools for shared marketing expenses and customer service expenses would be allocated between regulated and nonregulated activities "on the basis of the distribution of weighted customers (*e. g.*, customers with protocol conversion vs total Infopath customers).[92]

56. MCI objects to these proposals. MCI argues that NYNEX should be required to explain these apportionment and allocation processes for expenses related to shared digital electronic equipment.[93] In response, NYNEX maintains that its apportionment and allocation methods are proper.[94]

57. We agree with MCI that NYNEX's proposals require additional explanation. For example, in the *Joint Cost Order*, the Commission required that maintenance expense associated with shared digital equipment be allocated based on current usage.[95] We are unable to determine whether NYNEX's proposal for investment-related operations expenses properly implements this requirement. That proposal would allocate shared digital equipment expense, including maintenance expense "in the same proportion as" NYNEX's overall investment in its Infopath packet switching network "distributed on an actual use basis.[96] Even if we were to assume, in the absence of an understandable explanation of the terms used in this allocator, that the "actual use basis" that would be employed to distribute these expenses is the relative number of asynchronous and synchronous ports functioning during a reporting period, we are doubtful that port numbers, rather than processing volumes, cause maintenance expenses for line director units. Moreover, the allocator

NYNEX proposes for shared marketing expenses and customer service expenses associated with its Infopath operations apparently assumes that NYNEX will incur the same marketing and customer service expenses for each customer receiving its nonregulated protocol processing service that it will incur for each customer receiving its regulated packet switching service. The manual states no basis on which we could judge the validity of this assumption.

58. NYNEX must reexamine each of the cost apportionment and cost allocation factors associated with its protocol processing operations in response to requirements stated in other portions of this *Order*. [97] In the course of that reexamination, NYNEX must attempt to develop apportionment and allocation factors responsive to the concerns stated above. The revised manual must state why each of its new apportionment and allocation factors respond to those concerns. In the event NYNEX proposes to retain any of the factors discussed above, the revised manual shall also state the justification for that proposal.

E. Forecasting Procedures

59. The *Joint Cost Order* established that carriers must forecast peak relative nonregulated usage of jointly-used network plant, but it did not state how the forecasts should be undertaken. Rather than focusing on the forecasting process, the Commission relied on reallocation procedures to induce carriers to make their forecasts as accurate as possible. If actual relative nonregulated usage is greater than forecast relative nonregulated usage, carriers are required to reallocate plant from regulated to nonregulated activities at undepreciated baseline cost plus an interest charge, equivalent to the authorized interstate rate of return. Reallocations from nonregulated to regulated activities are to be made at depreciated baseline cost.[98]

60. In its manual, NYNEX does not describe either its forecasting methods or the true-up mechanisms it will employ in the event its forecasts are inaccurate. MCI asserts that the failures to include this information will give NYNEX the freedom to forecast usage as it sees fit, without any penalty for inaccuracy.[99] NYNEX contends that the Commission's requirements regarding reallocation of regulated and nonregulated investments are clear and require no further explanation in the manual.[100]

61. The Commission did not require carriers to describe in their manuals the methods they will employ to forecast peak relative nonregulated usage. Therefore, we reject MCI's argument that NYNEX should be required to describe its methods. The Commission's reallocation provisions should provide NYNEX with every incentive it may need to forecast future usage accurately. While the *Joint Cost Order* did not describe in detail the true-up procedures each carrier is to follow, there is no need for these procedures to be in place prior to the implementation of the manual. In addition, we anticipate supplying additional details about the true-up process early next year.[101] Therefore, we will not require NYNEX to describe its true-up procedures in the revised manual it will be filing in response to this *Order*.

F. Official Communications

62. The Joint Cost Order established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's rules, is that nonregulated activities are to be charged tariffed rates for services that are offered under tariff.[102] A corollary to that principle, contained in Section 32.27 of the Commission's rules, is that corporate affiliates are to be charged tariffed rates for assets or services provided pursuant to tariff.[103]

63. We have been unable to verify that NYNEX is proposing to operate in full compliance with these principles. In the affiliate transactions section of its manual, for example, NYNEX states that its operating companies will charge their corporate affiliates tariffed rates for tariffed telecommunications services, but will provide official communications services at fully allocated costs.[104] It is not clear whether these official communications services include services or service components that NYNEX provides to unaffiliated entities at tariffed rates. Similarly, for Account 6728 (Other general and administrative expenses), NYNEX proposes a "Company Communication/Other Support Services" cost pool, which would be allocated between regulated and nonregulated activities in the same proportion "as total [w]ages and [s]alaries in all final accounts less nonmanagement [p]lant [w]ages and [s]alaries.[105] It appears that this cost pool includes all, or at least a portion of, the expense related to NYNEX's official communications system, but it is not clear how the procedures NYNEX proposes for this cost pool would implement the principle that nonregulated activities are to pay tariffed rates for services offered under tariff. In its revised manual, NYNEX must explain, in amendments to the affiliate transactions section of its manual and to the narrative portion of its cost allocation table, precisely how its procedures for its official communications system will implement the principles discussed above.

G. Accounts to be Added

64. In the *Joint Cost Order*, the Commission required that carriers submit allocation proposals for each USOA account and subaccount.[106] Since that requirement would have mandated the allocation of amounts that are not used in the jurisdictional separations and interstate ratemaking processes, the *Automated Reporting Requirements Order* eliminated the allocation requirement for particular accounts. Appendix C to that *Order* listed for the first time the particular USOA accounts and subaccounts that would be subject to joint cost reporting.[107] In addition, six accounts used in the interstate ratemaking process must be added to the list. These additional accounts are: Account 1439 (Deferred charges), Account 2004 (Telecommunication plant under construction-long term), Account 4120 (Other accrued liabilities), Account 4360 (Other deferred credits), Account 5050 (Customer premises revenue), and Account 7150 (Gains and losses from disposition of land and artworks).

65. Because the list released in the *Automated Reporting Requirements* proceeding was not available until after NYNEX filed its manual, the manual omits several accounts contained on that list. The manual also omits three of the six accounts that are being added to the list. We direct NYNEX to amend its manual to include allocation proposals for each of the omitted accounts. The omitted accounts are Accounts 1130 through 1160, 1439, 2341, 4040, 4120, 5001 through 5302, 6311, 6341, 6561 through 6565, 7510 through 7540, and 7610 through 7640.[108]

H. Analysis of Specific Accounts

Accounts 1439 - Deferred Charges and 4120 - Other Accrued Liabilities

66. NYNEX failed to propose allocation methods for these accounts. When NYNEX amends its manual to provide for these accounts, NYNEX must create several cost pools. For Account 1439, the cost pools shall be for deferred charges related to compensated absences and for deferred charges related to equal access. For Account 4120, the cost pool shall be for liabilities related to compensated absences.

Accounts 2003 - Telecommunications Plant under Construction - Short Term and 2004 - Telecommunications Plant under Construction - Long Term.

67. In its manual, NYNEX proposes to aggregate these accounts for cost allocation purposes. Costs recorded in the aggregated accounts would be apportioned "to cost pools equal to Operating Plant Account identifications and then attribute[d] in same proportion as associated Plant Accounts.[109] We find NYNEX's proposal unnecessarily vague and cumbersome. In its revised manual, NYNEX should treat Accounts 2003 and 2004 separately. For each account, the revised manual should state NYNEX's proposed allocation method.

Account 2116 - Other Work Equipment

68. In this account, NYNEX proposes cost pools for special tools and work equipment, shop equipment, other tools and work equipment, and storeroom work equipment. With the exception of the first pool, which is related solely to special equipment that supports investment in Account 2114, and the last cost pool, that appears to be residual, NYNEX's manual does not make clear how costs are assigned to the two major pools in this account. In amendments to its manual, NYNEX shall explain the distinction between these two pools, as will as its cost pool apportionment methodology.

***Account* 2124 - General Purpose Computers**

69. In this account, NYNEX has established cost pools for specific function computers and for general purpose computer investment. NYNEX proposes to allocate the cost pool for specific function computers between regulated and nonregulated activities by analyzing its computer investment records "on an annual basis or as necessary to recognize major changes in the account or computer system.[110] This analysis would, according to the manual, allow NYNEX to identify computer investment dedicated to specific system functions. NYNEX would then identify the accounts affected by each dedicated computer system and would allocate the investment in each system in the "same proportion as distribution of identified accounts.[111] We have already directed NYNEX to explain the nature and scope of the study as well as the apportionment and allocation methods it proposes for this cost pool for specific function computers.[112] We believe that NYNEX could simplify its explanations if it were to propose a more straightforward method that would produce the same results. According to our understanding, NYNEX intends to associate the investment in this pool with each of the specific functions for which NYNEX has specific function computers, and to apply different allocation factors in relation to the investments associated with each specific function. There would be less room for misinterpretation of the manual if NYNEX were to identify and create separate cost pools for regulated specific function computers, nonregulated specific function computers, and for each of the specific system functions that it reasonably anticipates will have dedicated computer investment supporting both regulated and nonregulated operations. NYNEX should consider creating these cost pools when it revises its manual. Regardless of which method NYNEX elects to pursue, the revised manual must state precisely how NYNEX intends to allocate each type of specific function computer investment between regulated and nonregulated activities.

70. NYNEX proposes to allocate its cost pool for general purpose computer investment "in same proportion as total current [w]ages and [s]alaries in all final accounts less nonmanagement [p]lant [w]ages and [s]alaries.[113] In support of this proposal, NYNEX states that plant wages and salaries are associated with its central office, cable and wire facilities, customer premises installation and repair, and public telephone collection, installation and repair operations.[114] We infer from this explanation and NYNEX's proposed allocator that nonmanagement employees engaged in these operations do not use general purpose computers. We believe, however, that NYNEX may use general purpose computers to support the activities in which these employees engage,[115] and we cannot conclude, from the information NYNEX has provided, that NYNEX's proposed allocation factor would recognize such a support operation. NYNEX is directed to explain, in its revised manual, why its proposed allocation factor for this cost pool excludes nonmanagement plant wages and salaries.

Account 2311 - Station Apparatus

71. NYNEX proposes to assign the cost recorded in this account directly to its regulated operations. However, the accounting treatment of station apparatus is extremely complex as a result of the Commission's various decisions in its *Computer II Implementation* proceeding,[116] the *BOC CPE Relief Order*, [117] and the various options open to carriers in the provision of station apparatus as a result of these decisions. NYNEX is therefore required to explain in the comment section to its cost allocation table what it will be including in this account for station apparatus.

Account 2321 - Customer Premises Wiring

72. NYNEX proposes to assign this account directly to regulated activities. Since this account should contain only unamortized inside wiring costs capitalized prior to October 1, 1984, and since NYNEX is entitled to an opportunity to recover these costs from ratepayers,[118] we normally would have no objection to NYNEX's proposal. However, in other parts of its manual NYNEX indicates that it is recording current wages and salaries in Account 2321.[119] We have directed NYNEX to explain this practice.[120]

73. Since NYNEX must treat all its current inside wiring operations as nonregulated activities for accounting purposes, we would be greatly disturbed by any proposal to assign current wages and salaries associated with those operations directly to regulated activities. We would also be disturbed by any proposal to incorporate the results of such a direct assignment into allocation factors for shared investment that supports current inside wiring operations.[121] Accordingly, we direct NYNEX to show in its revised manual precisely how its accounting and cost al-

location procedures for its inside wiring operations will result in the allocation to nonregulated activities of all current inside wiring costs.[122]

Accounts 2681 - Capital Leases

74. NYNEX has divided this account into cost pools for "capital building leases" and "capital leases other." NYNEX proposes to apportion the capital building leases cost pool into "additional cost pools *similar* to those identified for" Account 2121 (Buildings).[123] NYNEX has identified seven cost pools for Account 2121. We infer from NYNEX's reference to "similar" cost pools that NYNEX does not have capital lease investment in each of the seven categories in which it has building investment. We also infer that NYNEX intends to create parallel cost pools for Account 2681 when, and to the extent that, there is capital lease investment to be apportioned into the building investment categories. We believe that there would be less room for misinterpretation, if the manual were to list the separate cost pools that NYNEX states that it has created for Account 2121. NYNEX is directed to do so in its revised manual.

75. We are also concerned about NYNEX's proposal for its "Capital Leases - Other" cost pool. NYNEX's manual established that this pool will be allocated "in the same proportion as associated" investment. We are not certain that leased investment will necessarily be subject to the same regulated and nonregulated usage as will investment that is owned. Therefore, we direct NYNEX to allocate this cost pool by using the same methodology as the similar investment rather than in the same proportion as the similar invesment.

Account 2690 - Intangibles

76. NYNEX has created one cost pool for this account. NYNEX proposes to allocate this cost pool in the same proportion as the combined distribution of total plant in service investment that is recorded in Accounts 2111 through 2690. We believe that many of NYNEX's intangible investments can be directly assigned to regulated or nonregulated activities. Therefore, NYNEX is directed to apportion this account into separate cost pools for regulated, nonregulated, and shared investment.

77. To the extent the costs in this account represent shared investment, we are not convinced that allocating the shared investment in the same proportion as NYNEX's total-plant-in-service investment would result in the allocation of an appropriate amount of NYNEX's intangible investment to nonregulated activities.[124] If NYNEX decides to apply a total- plant-in-service allocator to its shared cost pool for intangible investment, the revised manual must justify that proposal.

Account 3100 - Accumulated Depreciation

78. NYNEX states that it will identify its accumulated depreciation by plant account and attribute it "in same proportion as [p]lant [a]ccount.[125] From NYNEX's statements in its manual, we are not entirely certain that NYNEX intends to apply this method, on an investment account-by-investment-account basis, to all accumulated depreciation associated with its operating companies' telecommunications' plant in service.[126] NYNEX shall clarify this matter in its revised manual.

Accounts 5301 - Uncollectible Revenue - Telecommunications and 5302 - Uncollectible Revenue - Other

79. Although NYNEX does not address these accounts in its cost table, NYNEX apparently intends to "distribute [them] in the same proportion as directly identified revenue.[127] This method does not appear to be sufficiently cost causative. A cost allocation manual should match uncollectible revenue with the activities that caused them. We believe that NYNEX would achieve a closer match if uncollectible revenue-telecommunications were to be allocated in proportion to relative communications revenue and uncollectible revenue-other were to be allocated in proportion to relative non-telecommunications revenues. NYNEX shall amend its manual accordingly.

Account 6121 - Land and Building Expense

80. One of the three cost pools NYNEX lists for this account is for rent expense. NYNEX proposes to apportion this cost pool into "additional cost pools *similar* to those identified for" Account 2121 (Buildings).[128] Consistent with our treatment of the capital buildings leases cost pool in Account 2681,[129] NYNEX is directed to list in its revised manual a separate cost pool for each of the Account 2121 categories in which it reasonably anticipates the incurrence of rent expense.

Account 6362 - Other Terminal Equipment Expense

81. NYNEX proposes one cost pool for this account, which it directly assigns to regulated and nonregulated activities "based on specific function code identification." We have already directed NYNEX to explain this method in detail.[130] In the course of that explanation, NYNEX must show how this method complies with the Commission's requirement that maintenance expenses associated with other terminal equipment be allocated between regulated and nonregulated activities in proportion to current usage of the equipment. [131]

Account 6532 - Network Administration Expense

82. In its allocation factor for its other network administration expense cost pool in this account, NYNEX refers to a nonexistent account, "Account 221." NYNEX is directed amend its manual to confirm our understanding that the referenced account should be Account 2210 (Central office-switching).

Accounts 6561 to 6565 - Depreciation and Amortization Expenses

83. NYNEX proposes to allocate expenses recorded in Account 6560, which is a summary account for Accounts 6561 (Depreciation expense-telecommunications plant in service), 6562 (Depreciation Expenses-property held for future telecommunications use), 6563 (Amortization expenses-tangible), 6564 (Amortization expense-intangible), and 6565 (Amortization expense-other), between regulated and nonregulated activities "on an investment account specific basis in same proportion as associated investment account[s]."[132] NYNEX's proposal is inconsistent with the Commission's requirement that carriers report depreciation and amortization information on an account-by-account basis.[133] NYNEX is directed to allocate these accounts separately in its amended manual. In addition, we are not certain that NYNEX intends to apply its proposed allocation method, on an investment-account-by-investment-account basis, to all its depreciation

and amortization expense. Consistent with our treatment of Account 3100, we direct NYNEX to clarify this matter in its revised manual.[134]

Account 6611 - Product Management, Account 6612 - Sales, and Account 6613 - Product Advertising

84. NYNEX establishes several cost pools for these accounts. For each account, one cost pool, the common expense pool, is allocated with the marketing allocator. We require NYNEX to justify its proposal and explain if a more cost causative allocation device, such as time reporting, can be employed.[135]

Account 6623 - Customer Services

85. NYNEX proposes to apportion this account into twenty-nine separate cost pools. The descriptions of the individual cost pools provided in the manual do not adequately distinguish among the individual pools. In the comments column of its revised manual, NYNEX shall describe the nature and scope of each cost pool.

86. We also do not believe that NYNEX needs to have twenty-nine cost pools for this account. In its revised manual, NYNEX should combine each cost pool that would be directly assigned to regulated activities into one cost pool whenever the cost pool identification methods are the same. Other cost pools that use common allocation factors should also be combined. The revised manual, of course, must clarify those allocation factors.[136]

Account 6711 - Executive Expense and Account 6712 - Planning Expense

87. NYNEX proposes to use the general allocator to allocate costs in these accounts between regulated and nonregulated activities. We believe that NYNEX's method is insufficient and may result in inaccurate cost allocations. Since individuals engaged in NYNEX's executive and planning operations will apparently be subject to time reporting,[137] the cost of directly assigning or attributing portions of these accounts should be low. We therefore direct NYNEX to amend its manual to provide for more cost- causational methods for each of these accounts, or to justify in detail why it must resort to the general allocator.

Account 6722 - External Relations

88. NYNEX has created six cost pools for this account. The cost pools for connecting company relations would be directly assigned to regulated activities. The other cost pools, for corporate advertising, public relations, investor relations, regulatory government relations, and other external relations, would be allocated using the general allocator. While we concur in the proposal to assign the connecting company relations cost pool directly to regulated activities, we believe that additional external relations costs should also be directly assigned. In its revised manual, NYNEX shall either provide for such a direct assignment or explain why it should not be mandated.

89. We also believe that the general allocator is an inappropriate allocator for that part of corporate advertising and public relations cost pools which cannot be directly assigned. In the *JointCost Order*, the Commission determined that costs in these categories should be classified as marketing costs if intended to foster public awareness of a carrier's name, reputation, or activities.[138] Marketing costs that cannot be directly assigned are to be allocated on the basis of directly assigned and attributed marketing costs.[139] Therefore, NYNEX must use its marketing allocator to allocate these corporate advertising and public relations cost pools, unless it shows, in its revised manual, that the costs in these pools are not marketing costs. NYNEX must amend its manual accordingly.

Account 6725 - Legal Expense

90. NYNEX proposes to apportion this account into regulated direct expense, nonregulated direct expense, and other legal expense cost pools. The first two cost pools would be for expenses that can be directly assigned to regulated and nonregulated activities. The third cost pool would be for those legal expenses that cannot be directly assigned. These other legal expenses would include both direct legal expenses and overhead expenses, such as law library and general research costs. Since the overhead expenses support all of the NYNEX activities for which direct legal expenses are incurred, NYNEX shall divide its other legal expense cost pool into an other direct expense cost pool and an overhead cost pool. While we have no objection to use of the general allocator to allocate the other direct expense cost pool, NYNEX shall allocate the overhead cost pool in the same proportion as its direct legal expenses are allocated.

Account 6726 - Procurement Expense

91. NYNEX has created a "central office and cable and wire facilities charges" cost pool as well as an "other charges" cost pool for this account. NYNEX proposes to use cost pool distribution ratios developed at an annual review of company purchases to apportion costs into these pools. In its revised manual, NYNEX must explain this apportionment method in sufficient detail for us to evaluate it.

92. NYNEX proposes to apply the general allocator to its "other charges" cost pool. Since the general allocator reflects all of the operating companies' expenses, including expenses related to central office and cable and wire facilities, we believe its use here may result in a misallocation of costs. In its revised manual, NYNEX shall either propose an allocator for this cost pool that better reflects cost causation, or explain why use of such an allocator should not be mandated. In doing so, NYNEX shall explain whether it can employ time reporting by procurement personnel to allocate this account.

Account 6728 - Other General and Administrative Expense

93. We have questions regarding six of the ten cost pools NYNEX has created for this account. Those pools are for accidents and damages, compensated absences, benefit plan payments, other benefit payments (two pools), and other general and administrative expenses.[140] NYNEX proposes to apply the general allocator to the accidents and damages, benefit plan payments, and other benefit payments pools. To allocate the compensated absences cost pool, NYNEX proposes to use the general allocator "[f]rozen at the level of the first calculated [g]eneral [a]llocator" as its allocation factor.[141] For the other general and administrative cost pool, NYNEX states that it will create additional cost pools for Bellcore, NYNEX Corporate, and residual expenses. NYNEX proposes to allocate the Bellcore cost pool between regulated and nonregulated activities based on a functional review of Bellcore projects. Costs in the NYNEX Corporate cost

pool would be allocated based on a functional review of the charges in that pool. We believe that NYNEX proposes to use the general allocator for the residual cost pool.[142]

94. As an initial matter, we do not understand why NYNEX proposes to disaggregate its benefit payments expense into one cost pool for benefit plan payments and two additional cost pools for other benefit payments. NYNEX's proposal to apply the general allocator to each of its benefits payments pools indicates that those pools are sufficiently homogeneous to be aggregated for cost allocation purposes. NYNEX should either aggregate these pools in its revised manual or explain why aggregation would be inappropriate. In addition, since NYNEX has indicated that it will create separate cost pools for its Bellcore expenses, NYNEX Corporate expenses, and residual general and administrative expenses, it should list those cost pools in its revised manual.

95. Second, we believe that NYNEX's proposals to apply the general allocator to the expense in its accidents and damages, and benefit payments cost pools does not adequately reflect cost-causational principles. In its revised manual, NYNEX shall either specify more accurate allocation methods for these cost pools or explain why assignment or direct or indirect attribution should not be prescribed.

96. The compensated absences cost pool NYNEX has created for this account is the only compensated absences cost pool included in the NYNEX manual. Since compensated absences expenses should be recorded in the accounts in which associated wages and salaries are recorded, the revised manual should explain NYNEX's accounting procedures for compensated absences expense. We also believe current wages and salaries may be a more accurate allocator for these expenses than the general allocator frozen at its "first calculated level." NYNEX must either amend its manual accordingly or show, in its revised manual, why its proposed allocation factor should not be changed. In addition, the revised manual must also explain the methods NYNEX intends to employ to allocate the cost pools being created for Bellcore charges and NYNEX Corporate charges.

Account 6790 - Provision for Uncollectible Notes Receivable

97. NYNEX proposes one cost pool for this account, which would be allocated between regulated and nonregulated activities on the basis of an annual review of each note charged to this account. NYNEX states that it will develop a "representative distribution ratio" at this annual review. That ratio would be used as the allocation factor for this account until the next annual review.[143] While we have no objection to NYNEX's historical methodology in calculating its provision for uncollectible notes receivable, we are not certain that the method NYNEX proposes will adequately protect ratepayers. In addition to explaining its proposed method in its revised manual, NYNEX shall state why it should not be required to review notes more frequently or to develop procedures for adjusting its "representative distribution ratio" on the basis of current charges to Account 1200 (Notes receivable.)

Account 7110 - Income from Custom Work

98. NYNEX proposes to assign its income from custom work directly to regulated and nonregulated activities on the basis of an analysis of charges to this account. This proposal is inconsistent with NYNEX's proposal to treat custom work as an incidental activity.[144] NYNEX is directed to assign all its income from custom work to regulated activities in its revised manual.

Accounts 7220 - Operating Federal Income Taxes, 7230 Operating State and Local Income Taxes, and Account 7250 - Provision for Referred Operating Income Taxes

99. NYNEX proposes to allocate the current income tax accounts "on the basis of net income, and in accordance with existing tax laws."[145] Deferred taxes would be allocated on a variety of bases, with most cost pools following the allocation for plant investment.

100. Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are not consistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income, since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, NYNEX's proposal to use "net income" as an allocator is unexplained. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in an appropriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated -- income taxes. We direct NYNEX to amend its manual accordingly.

Account 7370 - Special Charges

101. NYNEX proposes one cost pool for this account, which would be allocated using the general allocator. Because this account includes charitable contributions and because NYNEX is entitled to recover only reasonable charitable contributions through its interstate rates, we direct NYNEX to create an additional cost pool for this account to isolate charitable contributions.

IV. PROCEDURAL ISSUES

102. In this section we address a number of procedural issues affecting the manuals. These issues are: (a) the submission of revised manuals in compliance with this order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manuals.

103. *Revised manuals*. We have required NYNEX to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed NYNEX to submit additional information concerning its affiliate transactions, list of nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of NYNEX's proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that determination on their compliance with Commission requirements would be based on a full record.[146] Similarly,

we believe that our review of NYNEX's amendments will be aided by public comment on the revision. Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.

104. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, NYNEX must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[147] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

105. *Interim reporting and record retention.* The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements* docket.[148] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[149] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period of January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

106. We require that carriers on an interim basis retain all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

107. *Routine amendments.* In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. For example, it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

108. Based on an analysis of these factors, we have decided to adopt the following requirements for the update of manuals.[150] First, several categories of information require our attention before the manual is implemented. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[151]

109. Second, we will require that NYNEX file any changes to its corporate structure in a timely manner.[152] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

110. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements set forth in the *Joint Cost Order*. At the same time, it also minimizes the number of times NYNEX must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

111. According, IT IS ORDERED that the request for waiver filed by NYNEX to allocate line director equipment investment based on a two-year forecast period IS DENIED.

112. IT IS FURTHER ORDERED that Cost Allocation Manual, File Number AAD 7-1678, IS APPROVED, subject to the conditions set forth in this *Order*.

113. IT IS FURTHER ORDERED that this *Order* is effective on January 1, 1988.

114. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual shall be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987)(*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987)(*Reconsideration Order*), *petitions for further recon. pending.*

[2] The NYNEX Telephone Companies consist of New York Telephone Company (NYT) and New England Telephone and Telegraph Company (NET).

[3] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[4] *Joint Cost Order*, 2 FCC Rcd at 1327-28, paras. 230-35.

[5] *See generally id.* at 1328, para. 235.

[6] 2 FCC Rcd at 1343, *as amended by Reconsideration Order* at Appendix B, *to be codified at* 47 C.F.R. Sec. 64.901(b)(4).

[7] The commenting parties are MCI Telecommunications Corporation (MCI), the New York Department of Public Service (NYDPS), and the International Business Machines Corporation (IBM).

[8] Pursuant to the *Joint Cost Order*, the Commission originally contemplated addressing the permanent, "or Part 32," manuals by Bureau orders only if the permanent manuals differed materially from the interim, or "Part 31," manuals that the Bell Operating Companies (BOCs) were invited to file. *Joint Cost Order*, 2 FCC Rcd at 1328, para. 235. Because the interim manuals remain pending, we are issuing separate orders for the BOCs' permanent manuals.

[9] *See* para. 2, *supra*.

[10] MCI Comments at 2-5.

[11] NYNEX Reply at 6-8.

[12] *Joint Cost Order* at 1318-19, para. 240. The *Joint Cost Order* uses the term "cost categories" to refer to groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." This *Order* will use the two terms interchangeably.

[13] *Id.* at 1319, paras. 165-66.

[14] *Id.* at 1319, para. 165.

[15] *Id.* at 1317-18, paras. 147-60.

[16] If the additional material we are requesting does not permit us to evaluate NYNEX's methods for selecting cost pools, apportioning costs into cost pools, and allocating cost pools to regulated and nonregulated activities, we may, rather than reject the revisions, order NYNEX to adopt a methods of our own choosing, pursuant to our delegated authority to ensure that the manual is implemented according to Commission requirements.

[17] *Joint Cost Order*, 2 FCC Rcd at 1328, para. 240.

[18] *Joint Cost Order*, 2 FCC Rcd at 1343, Appendix B, *to be codified at* 47 C.F.R. Sec. 64.901(b)(1); *see id.* at 1318, para. 161.

[19] Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (Mar. 12, 1986), *recon. in part*, 1 FCC Rcd 1190 (1986), *petition for further recon. pending, petition for review pending sub nom. NARUC v. FCC*, Case No. 86-1687 (D.C. Cir. Dec. 11, 1986).

[20] 1 FCC Rcd 1190 (1986).

[21] *Id.* at 1193-94, paras. 20-21.

[22] *Id.* at 1194, para. 21.

[23] *Joint Cost Order* 2 FCC Rcd at 1350, n.150; *see Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1194, para. 21.

[24] *Joint Cost Order*, 2 FCC Rcd at 1308, 1328, paras. 77-78, 240.

[25] *See id.* at 1308, paras. 77-78.

[26] *Joint Cost Order*, 2 FCC Rcd at 1335, paras. 290-92; *see Reconsideration Order*, 2 FCC Rcd at 6295, para. 109.

[27] *Joint Cost Order*, 2 FCC Rcd at 1345, *as amended by Reconsideration Order*, 2 FCC 6283, at Appendix C, *to be codified at* 47 C.F.R. Sec. 32.27.

[28] *Joint Cost Order*, 2 FCC Rcd at 1343, *as amended by Reconsideration Order*, 2 FCC 6283 at Appendix B, *to be codified at* 47 C.F.R. Sec. 64.901.

[29] *Joint Cost Order*, 2 FCC Rcd at 1328, para. 240.

[30] NYDPS Comments at 4-5.

[31] NYNEX Reply at 4-6.

[32] *Reconsideration Order*, 2 FCC Rcd at 6296, para. 118.

[33] *Joint Cost Order*, 2 FCC Rcd at 1310, paras. 88-91.

[34] *See generally Louisiana Public Service Comm' n v. FCC*, 106 S. Ct. 1890 (1986).

[35] *Ameritech Permanent Cost Allocation Manual Order*, DA87-1886, adopted December 28, 1987 at para. 14.

[36] *See Amended Sales Agency Plans of NYNEX Operating Companies*, ENF 84-51 (released Oct. 20, 1986).

[37] *Joint Cost Order*, 2 FCC Rcd at 1336, para. 299. For example, if NYNEX can demonstrate a generally-available price it pays to its unaffiliated sales agents, that generally-available price should be the price that is recorded for services BISC provides.

[38] *See* paras. 20-21, *supra*.

[39] *See* para. 17, *supra*.

[40] Our reading of the manual is that the phrase "at fully allocated costs" is intended to mean that the cost of the service will be allocated in full compliance with Section 64.901. We direct NYNEX to notify us if our reading of its manual is incorrect.

[41] NYNEX Manual at 33 (emphasis added).

[42] *Id.* at 41.

[43] *Reconsideration Order*, 2 FCC Rcd at 6315, n.185 (price list containing prices "comparable" to market prices insufficient to establish prevailing company price).

[44] NYNEX Manual at 43.

[45] *Id.*

[46] Id. at 44 (emphasis added).

[47] Joint Cost Order, 2 FCC Rcd at 1328, para. 240.

[48] Id. at 1321-22, paras. 182-87.

[49] NYNEX Manual at 96. NYNEX has also submitted, as an Appendix to its manual, certain of the materials it used prior to the adoption of the Joint Cost Order to ensure accurate employee time reporting. Since NYNEX recognizes that these materials require revision, we have used them for informational purposes only, and will not require them to be updated in the revised manual NYNEX will be submitting.

[50] NYDPS Comments at 3-4.

[51] NYNEX Reply at 5, n.9.

[52] Joint Cost Order, 2 FCC Rcd at 1321, para. 182.

[53] Id. at 1321-22, para. 185.

[54] See id.

[55] NYNEX Manual at 94.

[56] See para. 33, supra.

[57] NYNEX Manual at 92.

[58] Id. at 93.

[59] These company subaccounts are in addition to those prescribed in the USOA.

[60] E.g., Account 2002 (Property held for future telecommunications use).

[61] E.g., Account 2121 (Buildings).

[62] E.g., Account 2124 (General purpose computers).

[63] E.g., Account 6121 (Land and building expense).

[64] E.g., Account 6532 (Network administration expense).

[65] E.g., Account 6611 (Product management).

[66] E.g., Account 6623 (Customer services).

[67] See paras. 5-9, supra.

[68] See para. 7, supra.

[69] E.g., Account 2002 (Property held for future telecommunications use).

[70] E.g., Account 2111 (Land); Account 2112 (Motor vehicles).

[71] E.g., Account 2681 (Capital leases).

[72] E.g., Account 2007 (Goodwill); Account 6512 (Provisioning expense).

[73] E.g., Account 6611 (Product management); Account 6623 (customer services).

[74] Account 6721 (Accounting and finance).

[75] E.g., Account 2112 (Motor vehicles).

[76] See NYNEX Manual at 52-53.

[77] E.g., Account 6721 (Accounting and finance).

[78] See NYNEX Manual at 52-53.

[79] Joint Cost Order, 2 FCC Rcd at 1319-20, para. 168.

[80] NYDPS Comments at 5-7; IBM Comments at 2-11.

[81] Reconsideration Order, 2 FCC Rcd at 6288, paras. 43-44.

[82] Id., para. 45.

[83] NYNEX Reply at 3.

[84] NYNEX's failure to withdraw its waiver request precludes dismissal of that request.

[85] Joint Cost Order, 2 FCC Rcd at 1343, to be codified at 47 C.F.R. Sec. 64.901(b)(4).

[86] MCI Comments at 4-5.

[87] NYNEX Reply at 7 & n.14.

[88] Accuracy is necessary because NYNEX's protocol conversion operations are expanding and because inaccuracy would reduce the incentives NYNEX has to assign its protocol processing and packet switching costs directly to regulated and nonregulated activities whenever possible.

[89] NYNEX Manual at 58.

[90] Id. at 58-59.

[91] Id.

[92] Id. at 58.

[93] MCI Comments at 4-5.

[94] NYNEX Reply at 7 & n.14.

[95] Joint Cost Order, 2 FCC Rcd at 1320, para. 173.

[96] NYNEX Manual at 58, 71.

[97] See paras. 42-44, supra.

[98] Joint Cost Order, 2 FCC Rcd at 1320, paras. 170-72.

[99] MCI Comments at 6.

[100] NYNEX Reply at 7 & n.14.

[101] See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, Report and Order, 2 FCC Rcd 5770, 5775, para. 46 (1987)(Automated Reporting Requirements Order).

[102] Joint Cost Order, 2 FCC Rcd at 1318, para. 161. Reconsideration Order, 2 FCC Rcd at 6296, para. 123.

[103] Joint Cost Order, 2 FCC Rcd at 1336, para. 299.

[104] E.g., NYNEX Manual at 36.

[105] Id. at 81.

[106] Joint Cost Order, 2 FCC Rcd at 1328, para. 240.

[107] Automated Reporting Requirements Order, 2 FCC Rcd 5770, at Appendix C.

[108] If NYNEX finds that it has no activity in any of the accounts that must be included in its manual, NYNEX must list the account and indicate that it does not presently use the account.

[109] NYNEX Manual at 61.

[110] NYNEX Manual at 66.

[111] Id.

[112] See paras. 42-44, supra.

[113] NYNEX Manual at 66.

[114] Id. at 65.

[115] This would happen if, for example, NYNEX used general purpose computers to process work orders for inside wiring maintenance.

[116] Procedures for Implementing the Detariffing of customer Premises Equipment, CC Docket No. 81-893, 95 FCC 2d 1276 (1983) modified on reconsideration, 50 Fed. Reg. 9016 (1985); Second Report and Order, 98 FCC 2d 814 (1984) (detariffing mobile CPE); Third Report and Order, 99 FCC 2d 354 (1984) (detariffing the independent local exchange carriers' state- tariffed CPE); Fourth Report and Order, 49 Fed. Reg. 47,265 (1984) (detariffing CPE owned by Western Union and the international record carriers); Fifth Report and Order, 49 Fed. Reg. 46,378 (1984) (addressing accounting procedures to be followed in detariffing CPE); Sixth Report and Order, 50 Fed. Reg. 1525 (1985) (establishing a framework for detariffing National Security and Emergency Preparedness (NSEP) CPE); and Seventh Report and Order, FCC 86-17 (released January 23, 1986)(detariffing federally-tariffed CPE owned by the independents and NSEP CPE).

[117] BOC CPE Relief Order, 2 FCC Rcd 143 (1987), modified on recon. FCC 87- 389, released December 17, 1987.

[118] See Detariffing the Installation and Maintenance of Inside Wiring, Report and Order, Docket 79-105, 51 Fed. Reg. 8498 (Mar. 12, 1986), recon. on other grounds, Inside Wiring Reconsideration Order, supra.

[119] E.g., NYNEX Manual at 64.

[120] See paras. 45-46, supra.

[121] See, e.g., NYNEX Manual at 63 (proposal to allocate shop equipment cost pool for Account 2116 using allocation factor apparently reflecting direct assignment of current inside wiring costs to regulated activities); see also id. Manual at 65 (proposal for office equipment investment).

[122] If NYNEX performs inside wiring operations to support its official communications system, a proportionate share of the costs of those operations, of course, could be allocated to regulated activities. See paras. 63-64, infra.

[123] NYNEX Manual at 67 (emphasis added).

[124] We note that NYNEX's proposed allocation method is, to a limited extent, circular because it includes Account 2690 in the plant accounts that form the basis of the allocation. This problem must be corrected when NYNEX amends its manual.

[125] NYNEX Manual at 68.

[126] See Joint Cost Order, 2 FCC Rcd at 1326, paras. 218-20.

[127] See NYNEX Manual at 49.

[128] Id. at 70 (emphasis added).

[129] See para. 75, supra.

[130] See para. 44, supra.

[131] See Joint Cost Order, 2 FCC Rcd at 1320, para. 173.

[132] NYNEX Manual at 73.

[133] Automated Reporting Requirements Order, 2 FCC Rcd at Appendix C, p. 2.

[134] See Joint Cost Order, 2 FCC Rcd at 1326, paras. 218-20.

[135] In doing so we caution NYNEX to limit its use of the marketing allocator to a small percentage of its marketing costs. As in the case of the general allocator, the marketing allocator ratio is only meaningful if it represents a majority of total marketing expenses. Cf. Joint Cost Order at 1318. If we find that the marketing allocator is used to allocate a large percent of marketing expenses, we will require carriers to amend their cost allocation procedures to maximize direct assignment and attribution.

[136] See para. 44, supra.

[137] See para. 38, supra.

[138] Joint Cost Order, 1 FCC Rcd at 1354, n.321.

[139] Id. at 1324, para. 202.

[140] We address the company communications/other support services cost pool in our discussion of official communications. See paras. 63-64, supra.

[141] NYNEX Manual at 80.

[142] The language of this part of the manual is somewhat garbled and difficult to understand. See id. at 81.

[143] Id. at 81.

[144] See para. 15, supra.

[145] NYNEX Manual at 85.

[146] Revised manuals shall be served on all parties to the NYNEX manual proceeding.

[147] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[148] Joint Cost Order 2 FCC Rcd at 1328-29, para. 242.

[149] Automated Reporting Requirements, 2 FCC Rcd at 5775, para. 46.

[150] We shall establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[151] A stay of the effectiveness of a proposed change to the manual shall not be for longer than 180 days.

[152] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-525

In the Matter of

Inquiry into Policies to be Followed
in the Authorization of Common Carrier
Facilities to Meet Caribbean Region
Telecommunications Needs During the
1985-1995 Period

REPORT AND ORDER

Adopted: December 10, 1987; Released: January 8, 1988

By the Commission: Commissioner Dennis concurring in the result.

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I. INTRODUCTION

1. This Report & Order concludes the first phase of the facilities planning process in the Caribbean region.[1] In this phase, policies and guidelines have been developed for the construction and use of common carrier transmission facilities in the Caribbean region during the period 1985-1995. This phase was initiated on June 7, 1983 with a Notice of Inquiry (NOI),[2] followed by a Notice of Proposed Rule Making (NPRM) on February 5, 1986.[3] Finally, on July 16, 1987, an Order was issued soliciting comments in response to American Telephone and Telegraph's (AT&T) Further Planning Update (Revised TCS-1) submitted to the Commission July 1, 1987.[4]

A. Notice of Inquiry

2. In the NOI, we stated that we were beginning this proceeding at the request of both American Telephone and Telegraph (AT&T) and Communications Satellite Corporation (Comsat) and in response to the large volume of traffic between the United States and Caribbean region nations. We stated that in developing the policies and guidelines for the construction and use of communications facilities, we would consider traffic forecasts, existing transmission facilities in the region, the transmission technologies (including circuit multiplication technologies) available during the planning period, costs of facilities and alternative facilities plans encompassing a range of facilities options and timing for the introduction of facilities. We also indicated that we would analyze these alternative plans in terms of ability to satisfy forecasted demand, cost, ability to provide service reliability including restoration of service considerations, the demand flexibility provided, technological risks and correspondents' acceptance.

3. In response to the NOI, the United States International Service Carriers (USISCs)[5] submitted a total of four plans (Plans 1, 2, 2A and 2A Modified). Comsat filed two plans (No Cables Plans 1 and 2), with basic planning data and analyses. The USISCs' Plans 1, 2 and 2A proposed the construction of one or more analog cable systems for service in 1986 and one or more 45 and 90 megabit per second (mb/s) digital optical fiber cables to be operational in 1988. In May 16, 1985, the USISCs presented a plan they designated Plan 2A Modified. Plan 2A Modified consisted of two cable systems to be deployed in 1989: (1) a Transcaribbean cable system (TCS-1) which consists of a digital optical fiber cable containing one traffic bearing fiber pair operating at 280 mb/s between Florida and Jamaica; a digital optical fiber cable containing one traffic bearing fiber pair operating at 140 mb/s between Jamaica and Colombia; and a digital optical fiber cable containing two traffic bearing fiber pairs operating at 140 mb/s between Jamaica and a branching unit where one 140 mb/s fiber pair is routed to the Dominican Republic and the other to Haiti; and (2) a Central American cable which consists of a digital optical fiber cable with one traffic bearing fiber pair operating at 140 mb/s and providing, 1890 64 kb/s circuits between Florida and Honduras.

4. Both Comsat's Plan 1 and Plan 2 assumed that no new cable systems are introduced during the planning period. Comsat calculated that INTELSAT's existing and planned satellite capacity will be sufficient to handle all forecasted demand in the region. These plans assume use of TASI equipment on existing cable facilities. Both assume introduction of INTELSAT VI satellites in the Atlantic Ocean Region (AOR) in-orbit spare, Primary Path, Major Path 1 and Major Path 2 roles in 1986, 1986, 1991

and 1992 respectively. The plans also assume the use of the "latent capacity" in the Third Florida-St. Thomas cable system for international traffic. The two plans differ only in their assumption of earth station antenna construction. Plan 1 assumes construction of only three additional earth station antennas during the planning period. Plan 2 assumes construction of additional earth station antennas in accordance with INTELSAT planning guidelines.

B. Notice of Proposed Rule Making

5. On February 5, 1986, we initiated a Notice of Proposed Rule Making (NPRM), reaching certain tentative conclusions concerning facilities for the Caribbean region from 1985 to 1995 and requesting public comments on those conclusions. We tentatively concluded that the USISCs' Plans 1, 2 and 2A could be excluded from further consideration and that our general approach with respect to flexible circuit distribution adopted in the North Atlantic[6] and Pacific regions[7] is equally applicable to the Caribbean region. Updated planning information from the USISCs and Comsat for this region was requested. We also requested a complete set of analyses of media and route diversity, cost, demand flexibility, and service reliability for the alternative facilities plans based on the most recent traffic forecast.

6. *Reduction of Range of Alternative Plans.* The USISCs initially asserted that the analog cables proposed in Plans 1, 2 and 2A were necessary to provide earlier relief from facilities congestion than would be possible with digital optical fiber cables that could not be placed into service until 1988. However, the USISCs later represented that existing facilities will be adequate to satisfy service demand until 1989, and that the development of 45 and 90 mb/s digital optical fiber cables had been abandoned. The USISCs also asserted that for logistical or economic reasons, some of the foreign correspondents prefer the digital optical fiber cable technology at the earliest time. We found that based on the record then before us, the digital optical fiber cables then proposed were less expensive, not only on a per circuit basis, but in terms of total cable system capital costs as well. We also noted that the record tended to confirm the USISCs' conclusion that existing cable and satellite facilities were adequate to meet near term demand for service. Therefore, we concluded that the USISCs' Plans 1, 2 and 2A could be eliminated from further consideration.

7. *Circuit Distribution Guidelines.* We also tentatively concluded in the NPRM that the general approach to circuit distribution guidelines we had adopted in the North Atlantic and Pacific Ocean regions was equally applicable to the Caribbean region. Specifically, we tentatively concluded that all circuits used by all carriers for the provision of all services, with the exception of circuits used by AT&T for the provision of International Message Telephone Services and 800 Service-Overseas (IMTS), should not be subject to circuit distribution guidelines. We did not reach a tentative conclusion regarding circuit distribution guidelines for AT&T's IMTS circuits, but requested comments on AT&T's modified economic loading proposal and any additional circuit distribution proposals the parties wished to submit. Parties were also asked to comment on our tentative conclusion that the general approach we took with respect to circuit distribution guidelines in the North Atlantic and Pacific regions is equally applicable to the Caribbean region. We also requested parties to provide us with their views on what effect new developments in the international telecommunications environment would have on the development of circuit distribution guidelines.

8. *Updated Planning Information Requested.* In view of the discussions evolving between the USISCs and their foreign correspondents, INTELSAT's continuing consideration of satellite and configuration options, and the dynamic nature of digital optical fiber cable technology, we requested additional information from the parties to this proceeding. The USISCs were asked to provide an updated traffic forecast for each carrier, any changes to their preferred plan, changes in cost information and cost and demand flexibility analyses for Plan 2A Modified or any amended plan. We also requested Comsat to provide information on the potential for INTELSAT to utilize INTELSAT Z satellites as opposed to INTELSAT VI satellites in the Atlantic Ocean Region major path roles, the effect that the use of such satellites would have, and a schedule for the implementation of TDMA/DSI by the Caribbean area correspondents of the USISCs.

C. Responses to the NPRM

9. On February 25, 1986, AT&T and Comsat filed responses to the request for additional information contained in the NPRM. In its response, AT&T disclosed that the USISCs proposed to modify their preferred plan, Plan 2A Modified. The new plan, designated Plan 2A Modified, as amended, proposed construction of a digital optical fiber cable containing two traffic bearing fiber pairs operating at 140 mb/s between Florida and a branching unit. At the branching unit, one of the fiber pairs would be routed to the Dominican Republic and the other to Jamaica. A digital optical fiber cable containing one traffic bearing fiber pair operating at 140 mb/s between Jamaica and Colombia is also proposed by Plan 2A Modified, as amended. The Central American cable between Florida and Honduras was not changed by the amended plan.

10. AT&T also submitted the following: (1) an updated year-by-year, country-by-country traffic forecast for the 1985-1995 planning period; (2) a circuit distribution for Plan 2A Modified, as amended, based on the updated traffic forecast; and (3) an updated set of cost elements and assumptions.

11. Comsat submitted: (1) information updating television forecasts for the Caribbean region; (2) information about the potential replacement of INTELSAT V-A by INTELSAT Z or other satellites rather than INTELSAT VI satellites; (3) estimates of the costs for and the Caribbean region capacity of the INTELSAT Z satellite or other follow-on satellites; and (4) a country-by-country timetable indicating when the USISCs' Caribbean area correspondents are scheduled to implement time division multiple access and digital speech interpolation (TDMA/DSI) access to each Atlantic Ocean Region INTELSAT satellite.

12. CICI, GTE Sprint, ITTWC, MCII, RCAG and WU filed only traffic forecast updates. AAC&R and ITTCIVI filed their updated country-by-country circuit forecast and circuit distributions. Of these, all except WU requested and received confidential treatment of their forecasts/distributions.

13. On March 17, 1986, the Commonwealth of Puerto Rico (the Commonwealth) requested a 45-day extension of time to file comments in response to the NPRM. The Commonwealth stated that the time was necessary to per-

mit it to complete a study it had commissioned to translate the economic and security goals of the Caribbean Basin Initiative and Puerto Rico's own development into a strategic plan for telecommunications services and facilities in the region. The Commonwealth asserted that this study was essential to the deliberations in formulating a decision which reflects both economic reality in the region and supports the policy goals of the Caribbean Basin Initiative. Acting pursuant to delegated authority, the Chief, Common Carrier Bureau denied the Commonwealth's request for extension of time on March 21, 1986.[8] The Chief, Common Carrier Bureau found that good cause for the requested extension had not been shown. He noted that the issues that the Commonwealth indicated its study would address did not relate to the Caribbean Basin Initiative, but to the effect on Puerto Rico of the facilities planning efforts of this docket. The Chief, Common Carrier Bureau noted that this proceeding had been in progress for nearly three years at the time of the Commonwealth's request for extension of time and that the Commonwealth had not previously elected to participate in the proceeding nor shown why it could not have completed a study during this period.

14. Comments in response to the NPRM, were filed by AT&T, the Commonwealth, Comsat, jointly by AAC&R, ITTCIVI and ITT (the ITT Joint Commenters), MCII, RCAG, Simplex Wire and Cable Company (Simplex), WU, and media consultant Ernest A. Hakenen. Reply Comments were filed by AT&T, the Commonwealth, Comsat and MCII.

15. Three commenters, ITT World Communications, Inc. (ITTWC) (filing as joint commenters), MCII and RCAG, in addition to AT&T, supported the implementation of USISCs' Plan 2A Modified, as amended. Three other commenters, Simplex, WU and the Commonwealth did not specifically state a preference for any alternative plan. Comsat, on the other hand, presented the Commission with two alternative proposals: a "No New Cables Plan" and a plan which would delay introduction of the TCS-1 Cable until 1994 and eliminate the Central American Cable altogether (The Transcaribbean Cable in 1994 Plan). Comsat's plans assumed introduction of INTELSAT VI satellites in the Atlantic Ocean region in-orbit-spare, Primary Path, Major Path 1 and Major Path 2 roles in 1988, 1988, 1991 and 1994, respectively.

16. AT&T maintained that implementation of the USISCs' Plan 2A Modified, as amended, has substantial public interest benefits and the support of their foreign correspondents. AT&T contended that the plan will expand the availability and benefits of fiber optics technology to the Caribbean region at an early date. AT&T stated that a lightwave cable has unique characteristics that make it more desirable than satellites and will lead to new innovative services which in turn should stimulate demand in the Caribbean region. AT&T argued that Plan 2A Modified, as amended, will enhance media and path diversity[9] which is crucial to this region which often experiences severe hurricane conditions that could adversely affect satellite usage. According to AT&T, without introduction of a fiber optic cable system, media diversity in the Caribbean region will drop to an approximately 21/79 percent cable/satellite ratio in 1995. With the introduction of the TCS-1, AT&T states that media diversity will improve to a 36/64 percent cable/satellite ratio in 1989 with continued improvement during the remainder of the planning period. AT&T also projected that the Central American cable will improve media diversity to a 37/63 cable/satellite ratio by 1995. AT&T noted that one of the net benefits of media and route diversity is that service restoration will be vastly improved in the event of an interruption in service in a given facility. AT&T also maintained that Plan 2A Modified, as amended, meets demand flexibility in the Caribbean region. It also argued that the introduction of new digital technology will breed more demand for services to the region, thus utilizing the additional capacity more fully.

17. AT&T stated it believed that loading restrictions are impediments to intermodal competition and have distorted the market for international facilities. However, if loading restrictions were applied, AT&T would endorse the Commission's tentative conclusion in the NPRM that flexible loading guidelines, similar to those adopted in the North Atlantic and Pacific regions, should also be applicable to the Caribbean region. AT&T advocated that any loading principles adopted in the Caribbean should be applied on a region-wide, rather than country-by-country basis because it would constrain the carrier's flexibility and raise costs. In addition, AT&T urged that no loading restrictions be adopted beyond 1988, and that beyond that date, the Commission should continue to monitor, rather than require, loading guidelines. AT&T represented that its modified economic loading model differs from the pure economic loading in two significant respects: (1) it assumes there will be no off-loading of satellite circuits; and (2) it seeks to maintain service reliability. At present, this methodology was applied to the Caribbean on a regional basis for IMTS. AT&T asserted that its modified economic loading model will enhance service reliability by providing for greater media and path diversity to the region, resulting in a 44/56 percent cable/satellite ratio in 1995, compared to a 35/65 percent ratio in 1985.

18. Comsat argued that its No New Cables Plan demonstrates growth forecasts can be accommodated with existing and committed facilities with no compromise in service quality or reliability.[10] However, Comsat introduced another plan in its comments which assumes deployment of the TCS-1 in 1994 and no additional cables to Central America during the planning period. Comsat concluded no new cables to Central America can be justified during the 1985-1995 planning period with respect to the TCS-1 cable. According to Comsat, existing cable systems, coupled with INTELSAT space segment capacity are adequate to handle demand and diversity requirements into the 1990s and no new cable should be placed into service until at least 1994, at which time the St. Thomas II and Dominican Republic I cables are scheduled to be retired.

19. Comsat maintained that the No New Cables Plan is the most economical in terms of both minimizing unnecessary expenditures on facilities and maximizing the use of existing facilities. Comsat's cost analysis assumed that the INTELSAT satellites currently under procurement are expected to be sufficient to fill all operational roles until 1993.[11] Comsat stressed that correspondents' acceptance of Plan 2A Modified, as amended, is a major factor and should be given due weight. Comsat noted that the Caribbean region countries are small, with severe economic problems and in several cases, unstable political climates. Comsat stated that it is unaware of any countries, including those proposed as landing points, that have agreed to either the TCS-1 or the Central American cables. Comsat does not believe that introduction of the digital fiber optic cable in the Caribbean region would foster the develop-

ment of technological innovations. It stated that AT&T has already established a firm basis for developing its new fiber optic technology in the TAT-8 and TPC-3 cable systems in the Atlantic and Pacific regions and construction of additional digital cables in the Caribbean will not further that objective. As for the use of new digital technology, Comsat argued that the four countries proposed as landing points for the TCS-1 and Central American cables could gain access to such technology through the INTELSAT system. Comsat notes that none of the Caribbean correspondents carries digital traffic on the INTELSAT system and, to its knowledge, no such requirement exists.

20. Comsat questioned the emphasis on media diversity in the NPRM. It disputed the USISCs' assertion that the Caribbean region is often struck by high winds and hurricanes necessitating that satellite antennas be stowed to prevent damage. Comsat states that such action has occurred only once in 10 years. Comsat concludes that the TCS-1 would provide media diversity for only one country, Colombia, and increase path diversity for only three countries; Colombia, Jamaica and the Dominican Republic. However, Comsat states Colombia already has two satellite paths and is about to get a third, whereas the Dominican Republic will have one satellite and one cable path at least until 1994. Comsat adds Jamaica is considering the addition of a second satellite path.

21. Comsat challenged AT&T's traffic forecasts and trends for the Caribbean region and felt the demand is overstated. First, Comsat states that the USISCs have already scaled back their projections of demand resulting from net reductions of 28% for 1985, 32% for 1990, and 51% for 1995 for the Caribbean basin and Central America since initially proposing new cable facilities in 1983. Second, Comsat contended that the historical data on circuit activations in the Carribean shows actual annualized growth to be 7.4% to points to be served by the TCS-1 and 6.2% for points to be served by the Central American cable, as compared to AT&T's forecasts of an 11.5% average annual growth in the region.

22. Finally, Comsat commented that if the Commission chooses to grant flexible loading for the Caribbean region, then it should not grant AT&T the same 2% flexibility allowed AT&T in the North Atlantic region. Comsat argues that the same 2% flexibility would have a much greater adverse effect on it because of the slower growth rate in the Caribbean region. Instead, Comsat suggested that a 1% loading flexibility would be more appropriate. Comsat further suggested that the Commission's guidelines should take into account only those countries where both satellites and cables are available, or should be done on a country-by-country basis.

23. Media consultant Hakanen argued that the Commission's decision would ultimately appease AT&T and Comsat, but not the needs of the Caribbean region or its telecommunications service providers. RCAG supported our tentative conclusion in the NPRM applying the same general approach toward circuit distribution in the Caribbean region as in the North Atlantic and Pacific regions, and urged that international record carriers and new voice service entrants be exempted from circuit distribution guidelines. AAC&R, ITTCIVI and ITT Worldcom concurred with AT&T's analysis for Plan 2A Modified, as amended, and supported the Commission's tentative conclusion on circuit distribution guidelines. MCII generally supported the implementation of the above plan. Simplex did not specifically address any plan but urged the Commission to move rapidly to reduce regulatory oversight on construction and use. WU stated that its interest in the outcome of the proceeding is limited because it expects to satisfy its facilities requirements for the Caribbean region during the planning period by the lease of satellite circuits. Nevertheless, it urged the Commission to continue to require U.S. carriers who acquire ownership interests in cable systems to make capacity in such systems available to other carriers on an indefeasible right of use (IRU) basis. The Commonwealth filed comments maintaining that both national policy and practicality require that any facilities plans developed by the Commission support the goals and impact of the President's Caribbean Basin Initiative and the Commonwealth's complementary central role in the economy of the Caribbean region.

24. In its reply comments, AT&T noted that, although the affected correspondents have indicated their support for a Central America cable, this project had not progressed as expected because of the political instability of the area and the correspondents' difficulties in obtaining financing. Therefore, AT&T requested that the Commission bifurcate this docket and defer consideration of the Central America cable to a later date when plans have progressed further. AT&T repeated this request in a May 15, 1986 letter from Mr. J.A. McEntee, Jr., Deputy Director of International Network Engineering and Planning, AT&T.[12]

25. AT&T also rejected Comsat's assertion that the Caribbean region countries are too small and relatively underdeveloped to take advantage of the new digital fiber optic cable technology. AT&T stressed that telecommunications administrations within the region have been working to digitalize their domestic and international networks and established, jointly with the USISCs, several working committees on planning and negotiations. It claimed that Comsat's proposals on balanced loading and the 1% flexibility factor are only designed to perpetuate the existing imbalance between cable and satellite circuits in the region. AT&T rejected Comsat's No New Cables Plan and Transcaribbean Cable in 1994 Plan as meritless since they do not take into account the Commission's objectives of fostering the development of technological innovations and the introduction of new and more cost-effective technologies. Moreover, AT&T noted that deferring the construction of the TCS-1 would not result in cost savings because of inflation and because Comsat relies on incremental satellite investment costs, rather than the total systems cost, for satellite usage. In this regard, AT&T charged that Comsat projects only the U.S.'s cost for satellites in the Caribbean region, but uses the total cable systems cost, rather than the USISCs' portion, in its analysis of cable systems costs. As a result, AT&T charged that Comsat overstates the USISCs' cost for the Transcaribbean cable by approximately $66 million.

26. In its reply comments, Comsat asserted that AT&T had not substantiated either its claim that the cables have the support of its foreign correspondents or that fiber optic cables are inherently more desirable than satellite.

27. In its reply comments, MCII endorsed Plan 2A Modified, as amended, but agreed with Comsat that loading requirements should apply only to countries where both cable and satellite facilities are, or will be, available during the 1985-1995 planning period. MCII advocated that a specific percentage of loading flexibility should be imposed upon AT&T. It opposed AT&T's request that any

circuit distribution guidelines adopted not extend beyond 1988. The Commonwealth stated in its reply comments that it was attempting to meet with the USISCs to work out a plan that will support the goals of the Caribbean Basin Initiative, tax investment incentives and Puerto Rico's unique role in the Caribbean region.

28. On June 6, 1986, the Commonwealth filed a Motion to Accept Supplemental Comments and Supplemental Comments to which was appended the completed study it had commissioned.[13] The thrust of the Commonwealth's arguments was that in view of Puerto Rico's well-recognized role in the economic development of the Caribbean region, and the notion that because political stability in the region brought about by economic development is central to U.S. national interest, the Commission should consider authorizing another fiber optic cable connecting Puerto Rico with the U.S. Mainland and other major points in the Caribbean. The Commonwealth further maintained that the Executive and Legislative Branches have endorsed economic development in the region.[14] The Commonwealth added that the additional cable would improve service to and from the island, and remedy the lack of media and route diversity. AT&T filed an opposition to the Commonwealth's motion on June 1986.

29. On July 9, 1986, the Commonwealth filed an *ex parte* letter in which it asserted that, based on the Caribbean Basin Economic Recovery Act, 19 U.S.C. Sections 2701 *et seq.*, and other national economic and security reasons, the USISCs' Plan 2A Modified, as amended should be:

> (1) modified so that the TCS-1 cable would be routed from Florida to Puerto Rico and then on to the Dominican Republic and Jamaica; or
>
> (2) modified to include an underwater branching unit in the TCS-1, off the coast of the Dominican Republic, which would provide the potential for a fiber optic cable connection between Puerto Rico and, via the TCS-1, the United States Mainland and other major interconnection points.

On July 25, 1986, the Chief, Common Carrier Bureau sent a letter to AT&T requesting responses to a series of questions pertaining to the Commonwealth's proposed modifications. AT&T responded by letter dated August 4, 1986. AT&T opposed both of the modifications proposed by the Commonwealth asserting that both would require renegotiations with the co-owners of the TCS-1 system, increase the total cost and the USISCs' share of the total cost for the TCS-1 cable and cause significant delay in the service date for the TCS-1 cable. On August 7, 1986, the Commission issued a public notice requesting comments on this AT&T response.

30. In comments filed in response to the public notice, the National Telecommunications and Information Administration (NTIA) supported the provision of fiber optic services to the Commonwealth, but believed that they can be provided without major disruption to the instant proceeding. NTIA strongly supported the Caribbean Basin Initiative's mandate to improve trade and economic assistance within the basin. However, it stated that any action taken to promote the Initiative should take into account the interests of the region as a whole. NTIA stated that although the new digital cable technology should be introduced into the Caribbean region without delay, it disagreed with the Commonwealth's argument that reconfiguration of the cable is required by the terms of the Caribbean Basin Initiative. For this reason, it did not support proposals that would substantially delay development and operation of the USISCs' Plan 2A Modified, as amended.

31. The Department of Defense (DOD) commented that Plan 2A Modified, as amended, meets some important national security interests in the Caribbean basin. DOD opposed any modifications which would result in delays in the implementation of the plan. It stated that the Commonwealth's proposals could delay implementation of the Plan 2A Modified, as amended, and would adversely affect the national security interests which would have been satisfied by its prompt implementation. DOD further stated that while its own activities in Puerto Rico and the upgrading of the communications facilities serving those activities are important to national security, other fiber optic cable plans are being considered which will serve those national security interests. The Commonwealth filed comments on AT&T's response.

32. At an October 16, 1986, meeting, an agreement was reached between AT&T and the Commonwealth. According to AT&T, an undersea fiber optic cable system, with a capacity of 560 mb/s directly connecting the U.S. and Puerto Rico would be built. AT&T also committed itself to build this cable as soon as other fiber optic cables are put into service in the Caribbean region.[15] In a subsequent letter addressed to the Commission, the Commonwealth states that in reliance and conditioned upon AT&T's agreements and commitments, it was withdrawing its opposition to Plan 2A Modified, as amended.[16] Additionally, the Commonwealth urges the Commission to recognize Puerto Rico's importance to the Caribbean Basin Initiative and U.S. national security interests in the region and to confirm that the proposed fiber optic cable between Florida and Puerto Rico -- including its placement into service in 1989 or as early as any other fiber optic cable system in the region -- is an essential component of the Caribbean regional facilities adopted by the Commission in this proceeding.

33. On February 18, 1987, AT&T filed an application requesting authority to construct and operate[17] and to land and operate[18] a digital optical fiber cable between Florida and Puerto Rico (Florico-2). The proposed cable is to contain two traffic bearing fiber pairs, each operating at 280 mb/s. In its application, AT&T proposed to construct the Florico-2 Cable for use in providing only domestic services. However, it did note the possibility that Florico-2 might be used as a joint domestic/international facility.

D. Revised TCS - 1 Plan

34. On July 1, 1987, AT&T submitted a Further Planning Update in this docket which indicates that a series of meetings of the prospective owners of the TCS-1 cable have resulted in an agreement on a revised configuration of the cable. The revised configuration would use capacity in the proposed Florico-2 optical fiber cable system between the United States Mainland and Puerto Rico. From Puerto Rico, the Revised TCS-1 would consist of a digital optical fiber cable providing two traffic bearing fiber pairs, each operating at 140 mb/s, between Puerto Rico and an underwater branching unit. At the branching unit, one fiber pair would be routed to Colombia and the other to the Dominican Republic. The Revised TCS-1 configura-

tion would also include a digital optical fiber cable which would provide one traffic bearing fiber pair, currently proposed to operate at 45 mb/s, between the Dominican Republic and Jamaica.

35. On July 16, 1987, the Chief, Common Carrier Bureau, pursuant to delegated authority issued an Order[19] accepting the Further Planning Update for filing and consideration in this docket, specifying a period for comments and reply comments and requesting the USISCs which were made parties to this proceeding to update the information requested of them in the NPRM. In addition, AT&T was requested to provide information pertaining to the allocation of capacity among the proposed owners in the various segments of TCS-1.

E. Comments and Reply Comments to the Revised TCS - 1 Plan

36. Updated traffic forecasts were filed by AT&T, ITTWC, MCII, RCAG, U.S. Sprint, and WU. Comments were filed by ITTWC, Comsat, Pan American Satellite (PanAmSat), AT&T and the Commonwealth. AT&T's comments included a response to the information request from the Commission. Although ITTWC stated in its comments that some controversy remained with regard to the cable construction and maintenance agreement proposed by AT&T, it came out in support of TCS-1 when it filed its reply comments. ITTWC encourages the Commission to maintain oversight on matters involving AT&T's possible termination of the Transcaribbean cable before the end of its useful life and AT&T's provision of efficient and economic landline routing.

37. Comsat states that its previous position that the record of this proceeding does not justify fiber optic cable in the Caribbean region, remains unchanged. However, Comsat implicates its principle concern is whether the INTELSAT system is able to obtain a reasonable share of the international traffic in order to remain competitive. It added that it is negotiating with AT&T to avoid the necessity for the Commission to issue loading requirements. Comsat hopes that a marketplace mechanism can be substituted for regulation and that the Commission will not be required to adopt loading guidelines. Comsat also specifically rejected the position by PanAmSat that separate satellite systems should be included in any loading requirement.

38. PanAmSat notes that while it is restricted to the provision of non-common carrier service, it and other separate satellite systems will offer additional Caribbean facilities. It does not object to the establishment of Revised TCS-1 as proposed, but requests AT&T to load traffic onto separate satellite systems. PanAmSat contends that disproportionate loading of satellites in the Caribbean region at present should not affect the Commission's decision regarding the placement of traffic on separate satellite systems. PanAmSat also queried whether Caribbean countries - particularly Colombia, the Dominican Republic, and Jamaica - have opened their telecommunications markets to facilities-based competition.

39. The Commonwealth notes that Revised TCS-1 would be inextricably intertwined with the, as yet, unapproved Florico-2 system. The Commonwealth's withdrawal of its earlier disapproval of TCS-1 was conditioned on promised benefits in the newest configuration. However, the Commonwealth contends that AT&T has acquired a monopoly in off-island services and facilities and has not indicated the terms and conditions of investment for other carriers. The Commonwealth notes further there is a lack of clarity whether AT&T's designated capacity would be sufficient or is even intended for other carriers. The Commonwealth therefore asks the Commission to suspend action on Revised TCS-1 until the overall characteristics of the TCS-1/Florico-2 system have been shown to be in the public interest and the consideration of policies to govern Puerto Rico's international and interstate telecommunications applications is completed.[20]

40. AT&T's comments explain that Segment F, embedded in Florico-2, consists of 5538 equivalent half-interests in minimum assignable units of ownership (MAUOs)[21] assigned to the Revised TCS-1 prospective owners. This segment is planned for use by other USISCs for international and CONUS-Puerto Rico/U.S. Virgin Island facility needs. This configuration of TCS-1 reduces the cable/satellite ratio on a regional basis from 21.2%/78.8%, under the No New Cables Plan in 1989, to a level of 35.5%/64.5% by the end of the planning period in 1995. AT&T adds that the achievement of the more acceptable diversity levels occur without the deloading of satellites or frozen satellite growth. According to AT&T, the number of satellite circuits in use in 1989, the year of Revised TCS-1 activation, would be increased by over 50% by the end of the planning period. AT&T states that the Revised TCS-1 now provides greater route diversity over the No New Cables Plan and reduces blockage and interruption. AT&T also points out that the plan can also accommodate unforeseen demand increases in the planning period. The total cost for the Revised TCS-1 system is estimated at $129.1 million, as opposed to the previous configuration of $128.1 million in 1989 dollars. According to AT&T, under a Use Related Cost Analysis methodology, the present worth in 1989 dollars of the Revised TCS-1 Plan costs for AT&T is $96.96 million. The comparable figure for the No New Cable Plan is $111.80 million.

II. DISCUSSION

41. In evaluating the USISCs' Revised TCS-1 Plan and Comsat's No New Cables and Transcaribbean Cable in 1994 plans, we shall apply the same set of criteria enumerated in our NPRM: forecasted demand and demand flexibility for the Caribbean region during the planning period; the need for media and route diversity; the introduction of digital optical fiber technology and the attendant benefits of intermodal and intramodal competition; the costs of the proposed alternative plans; and foreign correspondents' acceptance.

42. Below we find that the USISC's Revised TCS-1 Plan, which proposes the construction of a Transcaribbean Cable system linking Florida, Puerto Rico, the Dominican Republic, Jamaica and Colombia, the most acceptable plan. It will introduce new digital fiber optic cable technology to the region for the first time and will increase media and route diversity. We also find that the year 1989 is the proper in-service date for this cable. We will not reach any conclusion as to cost benefits associated with these plans because their costing methodologies and the support data are vastly different, rendering a comparison meaningless. Finally, we postpone deciding the loading requirements of circuits used by AT&T for the provision of IMTS and 800 Service-Overseas pending the conclusion of CC Docket No. 87-67. In that proceeding, we are

concurrently endeavoring to establish circuit distribution guidelines worldwide rather than on a region-by-region basis.

A. Traffic Forecasts and Demand Flexibility

43. The first forecast filed by the USISCs was prepared in conjunction with their participation in the July 1983 INTELSAT Global Traffic Meeting (July 1983 traffic forecast). On May 16, 1985, AT&T submitted a traffic forecast update based on the USISCs' participation in the July 1984 INTELSAT Global Traffic Meeting (July 1984 traffic forecast).[22] This forecast was 27 per cent lower than the USISC's July 1983 traffic forecast. According to AT&T, this reduction in the traffic forecast was due to the discovery of, and measures taken to eliminate, large scale toll fraud which had been discovered in the message telephone traffic between the United States and Caribbean region points. The traffic forecast appended as Attachment 4 to our NPRM consists of AT&T's July 1984 traffic forecast and the other USISCs' July 1983 traffic forecasts.[23]

44. In February 1986, the USISCs filed a Further Update on their traffic forecast in response to our NPRM. This traffic forecast was approximately 6 per cent lower on an average, annual basis than the traffic forecast set forth in our NPRM. In its February 25, 1986 planning update, AT&T noted its portion of the traffic forecast update showed a 16.6 per cent overall, average annual decrease in demand compared with its July 1984 forecast. It attributed this decrease for the most part to the success of the programs implemented in 1984 to eliminate toll fraud. AT&T also noted that other service improvements had increased the efficiency of existing circuits which had reduced its overall forecast of circuit requirements.

45. The most recent traffic forecast update filed by the USISCs (*See* Appendix) was submitted in response to our July 16, 1987 Order accepting AT&T's Further Planning Update for filing and requiring the submission of additional information.[24] This July 1987 traffic forecast is approximately 2.4 per cent higher than the forecast submitted in February 1986. However, it remains approximately 4 per cent lower than the traffic forecast appended to our NPRM.

46. In its responses to our NPRM, Comsat asserted that the growth rate of approximately 12 per cent reflected by AT&T's forecast update was too high based on the historic traffic growth rate for the Caribbean region. Comsat asserted that the average, annualized growth rate for the region during the 1983-1986 period had been only approximately 7.4 per cent. Comsat did not specifically address traffic forecasts in its comments filed in response to our July 16, 1987 Order.

47. AT&T does not assert that the TCS-1 cable system is required to meet demand for service in the Caribbean region during the planning period. In its Comments filed on March 27, 1986 in response to our NPRM, AT&T states:

> Based on the satellite capacity figures previously submitted by Comsat, there appears to be adequate spare capacity in the Atlantic Ocean Region satellite system to handle an unanticipated increase in traffic demand during the planning period. Any restrictions in the use of this spare capacity, however, depends on the ultimate satellite configuration adopted by INTELSAT.

In its responses to our NPRM, Comsat asserted that existing cable and satellite facilities are adequate to meet Caribbean region service demands throughout the planning period. Comments filed in response to our July 16, 1987 Order by AT&T and Comsat do not indicate a shift in either the AT&T or Comsat position on this issue.

B. Media and Route Diversity

48. The Commission has previously found that increasing route and media diversity in order to strengthen service reliability is of decisional significance. *All American Cable & Radio, Inc. et al.*, 67 FCC 2d 451 (1978). In the NPRM, we noted that construction of the Transcaribbean Cable could also preserve existing levels of route and media diversity to the Dominican Republic, Jamaica and Haiti. Currently, service between the United States and the Dominican Republic and Haiti is provided via three diverse paths. The first path is via the Florida-St. Thomas 2 and the St. Thomas-Dominican Republic cables. The second path is provided by an INTELSAT satellite. A third diverse path is via the Florida-St. Thomas 3 cable and microwave systems between the Virgin Islands and Puerto Rico and between Puerto Rico and the Dominican Republic. Jamaica has two paths available to it: a satellite path and U.S.-Jamaica-1. Construction of the proposed Transcaribbean cable would maintain the current level of media and path diversity after the retirement of the U.S.-Jamaica-1 cable in 1989 and Florida-St. Thomas 2 and St. Thomas-Dominican Republic cables in 1992.[25] Route and media capacity will actually be enhanced to Jamaica because the Jamaica-1 cable is presently saturated.

49. The Transcaribbean cable will allow growth traffic to cable as well as satellite media. We also noted in the NPRM that the Transcaribbean cable would establish for the first time a meaningful level of media diversity on the United States-Colombia route. At present, 98% of United States-Colombia service is provided via two satellite paths. A third satellite path is scheduled to be implemented in 1989. The only existing media diversity on this route is provided by 12 circuits in the Florida-St. Thomas 3 and St. Thomas-Venezuela 2 cables which transit Venezuela. Construction of the Transcaribbean Cable would provide direct media diversity to Colombia, one of the larger traffic routes in the Caribbean area.

50. According to AT&T, Revised TCS-1 provides considerably greater route diversity over the No New Cables Plan thereby minimizing blockage that would occur in the event of a failure in the largest facility route to each country. AT&T states Revised TCS-1 provides service to major load centers, such as Colombia, Barbados, the Dominican Republic, Haiti, Jamaica, and Trinidad, where none or only a very small percentage of circuits would survive if the largest route were interrupted under the No New Cables Plan. AT&T adds that under Revised TCS-1 the percentage of surviving circuits to each of these countries is increased.

51. Comsat disputes AT&T's claim of satellite earth sation systems failure caused by winds and hurricanes in the region. Comsat also urges that the Commission not follow its decision in the *All America Cables & Radio, id.*[26] Comsat argued the Transcaribbean cable would provide media diversity to Colombia only, and increase route diversity for Colombia, Jamaica and the Dominican Republic. Specifically, Comsat contends that since the Florida-Jamaica 1 cable will remain in service through the entire planning period, the media diversity benefits to

Jamaica cannot be sustained. AT&T replies that the United States-Jamaica cable will retire in 1989 when the Transcaribbean cable goes into service. The Jamaica-Panama cable, however, will be kept in service and will interconnect with the Transcaribbean cable to carry United States-Panama traffic. AT&T also points out that cable paths are independent of one another and one path failure does not necessarily result in failure of a concomitant cable route.

52. According to AT&T, the cable/satellite ratio will be 21.2/78.8 and 15/85 percent in 1989 and 1995 respectively under the No New Cables Plan on a Caribbean regional basis. This heavy disproportionate reliance on the satellite medium will be reduced to 27.8/72.2 and 35.5/64.5 percent in 1989 and 1995 respectively if Transcaribbean cable is introduced in 1989. This can be accomplished through the use of the modified economic loading plan with a concurrent increase in satellite circuits. In this time period, AT&T proposes to neither freeze satellite circuit growth, nor deload any satellite circuits. AT&T further states that the number of satellite circuits in use in the year of the Transcaribbean cable's activation would be increased by over 50% by year end 1995. The Revised TCS-1 improves the satellite/cable diversity ratio, offers greater route diversity, and accommodates unforeseen demands. The new configuration will allow the offering of interexchange and international services and enhance the development of the Puerto Rican off-island market. Puerto Rico will be able to serve as the hub for terrestrial digital services and there will be greater service restoration capabilities.

53. As we noted in the NPRM media and path diversity reliability is an important factor in our decision-making process. Without Revised TCS-1, Jamaica will lose cable service and thereby also be without media and path diversity. The Dominican Republic and Haiti will be without a cable path if Revised TCS-1 is not introduced and thus will have reduced path diversity. As existing cables will be retired during the planning period, we believe that a meaningful media/route diversity will be achieved by authorizing the Transcaribbean cable for the Caribbean region. With this background, we now have to decide *when* diversity will best be achieved. Under Comsat's No New Cables Plan, media diversity would be unavailable to Colombia, while route diversity to the Dominican Republic would be reduced. Under Comsat's Transcaribbean Cable in 1994 plan, without keeping the Jamaica-1 cable in service, there will be no media/route diversity to Jamaica until 1994.[27] The USISCs' Revised TCS-1 Plan would increase route diversity for Jamaica (assuming the U.S.-Jamaica-1 cable is retired by then) and the Dominican Republic and introduce media diversity for Colombia. Accordingly, we conclude that a 1989 in-service date for the Transcaribbean cable is appropriate given much needed media/route diversity in the region by that time because of plans to reduce existing cables, including U.S.-Jamaica-1 in 1989, followed by others during the planning period.

C. Introduction of Digital Optical Fiber Cable into the Caribbean Region

54. In the NPRM, we stated that fostering the development of technological innovations and the introduction of new, more effective technology are often given considerable weight in reaching Commission decisions. We have long recognized the importance of early implementation and use of new and more cost effective technologies and found this policy is in the public interest.[28] We also articulated this policy in our *Statement of Policy and Guidelines* in Docket No. 18875, our first comprehensive proceeding for addressing North Atlantic facilities requirements.[29] In authorizing the construction of the TAT-8 digital fiber optic submarine cable, the Commission again stressed the importance of timely introduction of new technology.[30] In the *Pacific Facilities Planning* proceeding,[31] we found that introduction of a lightwave cable system, the TPC-3, in the Pacific Ocean Region (POR) would bring digital fiber optic submarine cable technology into the region for the first time, and that such a cable would at some future date become part of a globally interconnected digital network.

55. Examining the Further Planning Update in light of these precedents, we find that it could directly introduce the benefits of digital optical fiber submarine cable technology to Puerto Rico, Jamaica, the Dominican Republic, and Colombia. It could also extend the benefits of this technology to Haiti, Antigua, Barbados, Dominica, the French Antilles, Grenada, Guyana, Montserrat, St. Kitts, St. Lucia, Tortola, Trinidad and St. Vincent through the extension of circuits in the cable by digital microwave systems. It would promote technological development for the region and enhance customer choice.

56. Attendant with the introduction of new technology are the benefits of intermodal and intramodal competition. In *Pacific Facilities Planning, id.*, we found that the introduction of the TPC-3 will increase intermodal competition, thus promoting efficiency and creating a downward pressure on rates. We also found that intramodal competition will be increased because those carriers desiring cable circuits but presently unable to obtain them will have them available for use. In the Caribbean region, access to digital cable facilities would have the same effect. It will also improve intermodal competition to those points by permitting services now provided exclusively by satellite to be provided by cable as well. We also believe that intramodal competition in the Caribbean region will be increased with the introduction of the Transcaribbean cable, since those carriers desiring new digital cables, rather than the existing analog cables, will have them available for use.

57. AT&T states that lightwave cable is generally competitive, although not fungible with satellites. It says that lightwave cable has unique characteristics that make it more desirable than satellite for many users, in terms of cost, reliability, reduced delay, security, freedom from interference, and a high probability of error-free digital transmission. AT&T adds that Revised TCS-1 has the ability to accommodate unforeseen increases in forecasted demand during the planning period. AT&T maintains that this additional capacity would be readily available to satisfy new service needs for the Caribbean region which the introduction of Revised TCS-1 is expected to stimulate.

58. Comsat, however, comments that AT&T already has established a firm basis for developing its new fiber optic technology in the 1988 by deployment of TAT-8 and TPC-3 systems. As for fostering the use of new technology, Comsat asserts that only countries with landing points could gain any real benefits from fiber optic cable technology. Moreover, these and other countries linked by microwave radio could gain access to such digital technology via the INTELSAT system. Comsat further asserts that neither the need nor the desire to carry digital traffic exists in the Caribbean region countries whose telecommunications infrastructures are relatively underdeveloped.

59. We believe that the availability of advanced telecommunications is the touchstone to the economic development of the Caribbean region. Industries such as banking, finance, transportation, manufacturing, and tourism, are highly dependent on reliable and efficient telecommunications links.[32] Fiber optics make it technically and economically feasible to provide via cable facilities wideband services such as high-speed data and video services which heretofore have been provided primarily by satellite. In addition, fiber optic cable has other advantages such as: the elimination of transmission delays often found in satellite circuits; increased transmission security; immunity to electromagnetic interference; immunity to radio frequency interference; and a low bit error rate. More importantly, the introduction of the Transcaribbean cable will provide the benefits of new digital cable technology to the Caribbean region which heretofore were not available. The Transcaribbean cable will provide the region with terrestrial digital communication with other parts of the world through connections with digital optical fiber cables in the AOR and POR.[33] Therefore, consistent with our findings in the AOR and POR facilities planning, we conclude that construction of the proposed Transcaribbean cable described in the Further Planning Update in the Caribbean region would promote technological development as well as enhance customer choice.

D. Costs Comparison

60. The total cost for the Revised TCS-1 system is projected at $129.1 million, as opposed to the cost of Plan 2A Modified, as amended, projected at $128.1 million in 1989 dollars. AT&T notes that the Revised TCS-1 has over 50% more miles of fiber pairs and cable than the previous configuration. The USISCs' costs have increased from $62.1 million to $75.7 million due to the assignment of whole MAUOs for the CONUS-Puerto Rico interexchange services which were not contemplated with the former configuration. The USISCs' cost would be 50% of the total $129.1 million cost absent whole MAUOs which the USISCs are taking for their interexchange services and whole MAUOs which AT&T is taking for future IRU grants.

61. AT&T performed an analysis of the costs of Revised TCS-1 in comparison to the No New Cables Plan using its Use Related Cost Methodology.[34] The analysis is based on AT&T's investment, capacity and expenses to provide its international MTS traffic to countries served by Revised TCS-1 throughout the life of the system. The analysis pertains only to AT&T's costs and not the costs of other USISCs which data AT&T was unable to access because of its proprietary nature.[35] The use-related method includes AT&T's portion of the total investment and operating cost outlays for new cable systems introduced during the planning period together with estimated annual per-circuit Comsat tariffed lease charges for international satellite circuits. AT&T states the present worth in 1989 dollars of the Revised TCS-1 plan costs is $96.96 million. It computes the comparable figure for the No New Cables Plan as $111.80 million.

62. Comsat did not provide detailed cost analysis of the Revised TCS-1 Plan. However, Comsat argues that the use-related cost methodology has previously been rejected by the Commission. Comsat states that AT&T continues to make an "apples and oranges" comparison between satellite and cable costs. Further, Comsat argues that the AT&T estimates for the satellite rearrangement costs, $13.26 million under the No New Cables Plan, is completely unsubstantiated and very high.

63. In arguments against Plan 2A Modified, as amended, Comsat's cost evaluation for each of the alternative facilities plans is based on the net present worth of incremental expenditures in 1986 dollars. Comsat's estimates include the total cable systems cost, rather than the investment and operating costs for the new cable. For satellites, it projects only the USISCs' share of incremental expenses for satellites serving the Caribbean region. As a result, Comsat's figures differ substantially from AT&T's. Comsat claims that its No New Cables Plan and the Transcaribbean cable in 1994 Plan make the most economic sense in terms of both minimizing unnecessary expenses of facilities and maximizing the use of existing or proposed new satellite facilities.[36]

64. As a general matter, comparisons of statistical data and accounting information are useful for detecting and explaining similarities and differences among plans. One means of achieving comparability is to require all entities to use identical accounting methods and to report the information in identical format, both in terms of quantitative and qualitative measures.[37] Here, we are presented with vastly different sets of economic support elements and costing bases, making it virtually impossible for us to perform any type of meaningful comparative analysis or draw any useful conclusions therefrom.

65. We do not find the costs analysis sufficient to adopt a position with regard to the methodologies offered. We have previously rejected AT&T's use-related methodology because it combines incremental cable costs with satellite lease charges in the comparison, creating a heavy bias toward cables. While cable costs are treated as strictly incremental, the satellite lease rates include return and depreciation of all current and prior investment, plus all system operation and maintenance costs and taxes. Accordingly, we will not make any conclusion as to the cost benefits associated with the plans.

E. Correspondents' Acceptance

66. As stated in the *Pacific Facilities Planning Order*, *supra*, although our decisions are not based solely on the needs and desires of foreign correspondents, international comity remains an important element in our decision-making process.[38] AT&T contends that contrary to Comsat's assertion that no Caribbean countries have evidenced an interest in the Transcaribbean Cable project, the correspondents have established, jointly with the USISCs, several working committees, including a Construction and Maintenance Agreement drafting committee. These various committees have met several times since the inception of the project and a draft maintenance agreement has been jointly prepared subject to a favorable Commission determination herein.

67. In the Further Planning Update, AT&T states that USISCs, the Dominican Republic, Haiti, Jamaica, Colombia, the British Virgin Islands, Barbados, and Trinidad and Tobago have indicated that they fully support the construction of the Revised TCS-1 system.

68. In response to the Further Planning Update, ITTWC indicated that problems remained with regard to co-owners acceptance of Revised TCS-1, despite AT&T's assertion that the plan had unanimous correspondents' support. In its reply comments, however, ITTWC indi-

cated that it and others were now in support of the cable based on a series of private compromises that had been reached. The Commonwealth, however, has withdrawn its blanket support of Revised TCS-1 because of the uncertainty of Florico-2 and its pending application before the Commission in CC Docket No. 86-309.[39] Notwithstanding the Commonwealth's reservations,[40] we conclude that construction of the Transcaribbean cable is consistent with our policy in promoting global telecommunications through international cooperation and comity.

F. Circuit Distribution Guidelines

69. Comsat, in response to the Further Planning Update continued to request that INTELSAT be loaded at a competitive level.[41] Comsat and AT&T strongly rejected PanAmSat's position in this portion of the proceeding for comparable loading on separate satellite systems. In CC Docket No. 87-67 we indicated that we were commencing development of circuit distribution guidelines on a worldwide rather than a region-by-region basis. In this regard, consideration of the loading guidelines submitted by the USISCs, PanAmSat, and Comsat are postponed and will be applied in keeping with the conclusions we reach in that docket.

III. SUMMARY AND FINAL CONCLUSIONS

70. We have concluded that the USISC's Revised TCS-1 Plan described in the Further Planning Update which proposes the construction of a Transcaribbean digital optical fiber cable system linking Florida, Puerto Rico, Jamaica, the Dominican Republic and Colombia, is the preferred alternative among the three plans presented for our consideration herein. The Revised TCS-1 Plan will introduce digital fiber optic cable technology to the region for the first time, and will maintain media and route diversity, will enhance existing restoration ability, is consistent with national security interests, and will promote intramodal and intermodal competition. Approval of this plan also supports international comity and the cooperative effort to improve service in the Caribbean region.

71. We will apply loading guidelines as decided in CC Docket No. 87-67. We also note the Commonwealth's concern with the operation and control of the Transcaribbean cable. With the recent action in CC Docket No. 86-309, the way has been paved for PRTC's entry into off-island markets. Consistent with AT&T's assertions, once PRTC has been authorized to enter these markets, we expect that capacity in Florico-2 will be made available to PRTC on an investment basis. Finally, with regard to PanAmSat's query as to whether negotiations among correspondents can be viewed as opening new foreign markets to facilities competition, we reiterate that such systems remain under the constraints and guidelines stated in the *Separate Satellite Systems* decision.[42]

IV. ORDERING CLAUSES

72. According, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 214, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 201-205, 214, 403 (1976) that we adopt the following policy guidelines for the Caribbean Ocean Region:

(1) We find that a Transcaribbean submarine fiber optic cable, Revised TCS-1, as described in the Further Planning Update with a ready for service date as early as the fourth quarter of 1989 is in the public interest.

(2) We defer consideration of the Central American Cable to future phase of this proceeding.

73. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. Section 605, IT IS ORDERED, that Sections 603 and 604 of the Act do not apply because the policy guidelines adopted herein is a rule of particular applicability and economic impact on AT&T and other members of USISCs who are not small entities, and is, hence, not subject to the Regulatory Flexibility Act.

74. IT IS FURTHER ORDERED that CC Docket 83-525 remains open for additional proceedings upon further order of the Commission.

75. IT IS FURTHER ORDERED that the Secretary of the Commission shall cause a summary of this Report and Order to be published in the Federal Register and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX

USISCs CIRCUIT FORECASTS (July 1987)

	Caribbean	Central American	South American	Total	Grand Total
	IMTS/ non-IMTS	IMTS/ non-IMTS	IMTS/ non-IMTS	IMTS/ non-IMTS	
1987	3199/166	1166/ 93	2625/328	6990/527	7517
1988	3813/121	1578/100	3410/349	8801/570	9371
1989	4428/136	1829/105	3993/366	10250/607	10857
1990	5008/141	2025/113	4424/383	11457/637	12094
1991	5611/153	2220/118	4882/403	12713/674	13387
1992	6225/159	2439/123	5420/418	14084/700	14784
1993	6932/164	2698/125	5986/433	15616/722	16338
1994	7720/168	2966/130	6615/446	17301/744	18045
1995	8571/178	3261/133	7287/457	19119/768	19887

USISCs: ATT, ITT, MCII, RCA, US Sprint, WU.

FOOTNOTES

[1] The jurisdictions included in the region are: the U.S. Mainland, Puerto Rico, the U.S. Virgin Islands, Antigua, Bahamas, Barbados, Bermuda, Cayman Islands, Cuba, Dominica, Dominican Republic, French Antilles, Grenada, Haiti, Jamaica, Netherlands Antilles North, Netherlands Antilles South, St. Lucia, Trinidad, Turks and Caicos, St. Vincent, Belize, Cost Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

[2] Caribbean Facilities Planning, FCC 83-251, 48 Fed. Reg. 28674 (released June 7, 1983).

[3] Caribbean Facilities Planning, FCC 86-29, 51 Fed. Reg. 9479 (released February 5, 1986).

[4] Caribbean Facilities Planning, 2 FCC Rcd 4509 (1987).

[5] The USISCs include: All America Cables and Radio, Inc. (AAC&R), AT&T, Comsat International Communications, Inc. (CICI), FTCC McDonnell Douglas International Telecommunications Company (FTCC) (formerly FTC Communications, Inc.), GTE Sprint Communications Corporation (GTE Sprint), ITT Communications, Inc.-Virgin Islands (ITTCIVI), ITT World Communications, Inc. (ITTWC), MCI International, Inc. (MCII), (formerly MCI/Western Union International, Inc.), RCA Global Communications, Inc. (RCAG), TRT Telecommunications Corporation (TRT), and Western Union (WU).

[6] *See* North Atlantic Telecommunications, 101 FCC 2d 1259 (1985).

[7] *See* Pacific Telecommunications, 102 FCC 2d 353 (1985).

[8] Order, CC Docket No. 83-525 (released March 25, 1986).

[9] Media diversity protects against the systemic failure of one medium by using more than one transmission medium to carry a correspondent's traffic. Path or route diversity is achieved through the use of a number of independent routes to carry traffic to a given correspondent and is one method of maintaining an adequate grade of service if one path fails.

[10] Comsat filed its Comment on March 28, 1986, one day after the specified pleading period. Comsat's Comments were accompanied by a Motion to Accept Late-Filed Pleading. We granted Comsat's Motion.

[11] Comsat assumed that the INTELSAT V-A serving as Major Path 2 will be replaced by INTELSAT VI at year-end 1993, and an accurate estimate of follow-on satellite costs would be somewhere between the cost of an INTELSAT V-A and the cost of the INTELSAT VI.

[12] We grant AT&T's request to exclude the Central American cable from this proceeding. Henceforth, our discussions and analyses of the plans will be limited to the Transcaribbean cable system only.

[13] The Bureau granted the Commonwealth's motion.

[14] *See* Caribbean Basin Economic Recovery Act, 19 U.S.C. Sections 2701 *et seq.* (Caribbean Basin Initiative).

[15] Letters from Congressman Jaime B. Fuster to Mark S. Fowler, Chairman, Federal Communications Commission, dated October 23, 1986 and December 12, 1986.

[16] Letter from Paul J. Berman, Attorney for the Commonwealth of Puerto Rico to the Commission, dated December 24, 1986.

[17] Application File No. W-P-C-5944.

[18] Application File No. S-C-C-87-001.

[19] Caribbean Facilities Planning, 2 FCC Rcd. 4509 (1987).

[20] Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off the Island of Puerto Rico, Report and Order, CC. Docket No. 86-309, released October 15, 1987.

[21] Each MAUO is an equivalent voice channel operating at 64,000 usable bits per second (b/s) and an additional 9,684.656 b/s required for multiplexing.

[22] This updated traffic forecast consisted of AT&T's update of its own traffic forecast and AT&T's estimate of the other USISCs' traffic forecasts.

[23] On September 18, 1985, AT&T provided the staff with a further update of AT&T's traffic forecast which had been prepared in connection with AT&T's participation in the June 1985 INTELSAT Global Traffic meeting. This forecast was approximately 10 per cent lower on the average than AT&T's July 1984 traffic forecasts.

[24] AT&T submitted the updated traffic forecast in its Further Planning Update. It there noted that this traffic update was based on bilateral agreements reached with its Caribbean region correspondents and reflects the data submitted to the 1987 INTELSAT Global Traffic Meeting. AT&T notes that this forecast is substantially the same as that submitted in February 1986.

[25] In its 1986 pleadings, AT&T provided a list of cables which will be retired during the planning period and their retirement dates. They are: United States-Bermuda (1988); Canada-Bermuda (CANBER) (1989); St. Thomas-Dominican Republic (DOMINICAN I) (1992); United States-Jamaica (1989); St. Thomas 1 (1991); St. Thomas 2 (1992); Jamaica-Cayman (1989); Bermuda-Tortola (BERTOR) (1990). The Military cable was retired at the end of 1985. The Havana 5 and 6 cables have reached the end of their design lives but have been held in service to provide a modicum of reasonable service between the United States and Cuba.

[26] In that decision, the Commission approved the construction of the BRUS (St. Thomas-Brazil) and VENEZ II (St. Thomas-Venezuela) cables partly on diversity grounds.

[27] Comsat maintains that Jamaica is planning a new earth station. Despite this claim, Comsat did not address this point in its comments on AT&T's planning update which indicated Jamaica was a single antenna country.

[28] ITT Cable & Radio, Inc., 5 FCC 2d 823, 831 (1966).

[29] Overseas Communications, 30 FCC 2d 571 (1971).

[30] Application for authorization to construct and acquire a digital cable system between the United States, and both the United Kingdom and France. FCC 84-240, Mimeo No. 34614 (released June 8, 1984).

[31] Pacific Facilities Planning, *supra*, at n.4.

[32] National security interests are also dependent on efficient and reliable telecommunications links. In its earlier comments, DOD stressed that a Transcaribbean cable would further important national security interests.

[33] We disagree with Comsat that the Caribbean countries have no desire to carry digital traffic. AT&T reports digital domestic network switches have been installed in the Cayman Islands, St. Lucia, and St. Vincent, with others planned for the British Virgin Islands, Montserrat, Anguilla, and other points. Dominica is committed to a $14 million project during the next three years to introduce a digital telephone system. In addition, international digital switches have been or will be installed in Antigua, Barbados, Jamaica, Trinidad, Dominican Republic and Colombia.

[34] AT&T had included use-related and investment-related methods analysis of TCS-1 when it submited Plan 2A Modified, as amended. Cost analysis of Revised TCS-1 in the Further Planning Update was limited to the use-related method.

[35] AT&T notes that because its ownership in Revised TCS-1 is so large compared to the other USISCs, it can be reasonably assumed that the results of its analysis are representative for other USISCs.

[36] Comsat assumes that the INTELSAT VA serving as Atlantic Major Path Two will be replaced by INTELSAT VI in 1993.

[37] The concept of a standardized costing methodology was explored in the Pacific Facilities Planning NPRM, FCC 82-206 (released May 20, 1982). Because commenting parties were unable to agree on any one specific method, we decided not to adopt one. *See* First Report and Order, Pacific Facilities Planning, FCC 82-513 (released December 3, 1982).

[38] *See also* Overseas Communications, 71 FCC 2d 1178, 1185 (1979); Authorized User Policy, 90 FCC 2d 1394, 1426 (1982).

[39] On October 15, 1987, the Commission issued a Report and Order in CC Docket No. 86-309. In the Report and Order, the Commission determined that competitive entry into off-island markets from Puerto Rico is reasonably feasible and would serve the public interest. The Commission set forth requirements with which Puerto Rico Telephone Company (PRTC) must comply before it will be authorized to enter off-island markets. PRTC currently has on file with the Commission applications to serve both domestic and international off-island points. Once PRTC has satisfied the requirements set forth in the Report and Order, action will be taken on PRTC's applications. AT&T has stated that once PRTC has received authorization to provide service in off-island markets, it will make capacity in Florico-2 available to PRTC on an investment basis. With the recent action in Docket 86-309, we believe that any concerns PRTC has with respect to the availability of Florico-2 capacity will be resolved.

[40] The Commonwealth argues that Revised TCS-1 cannot receive final Commission approval until Florico-2 has been approved. It also stresses that the grant of its own international and interstate telecommunications facility requests considered in CC Docket No. 86-309 would change the necessity and appropriateness of TCS-1.

[41] On November 16, 1987, Comsat submitted a letter to the Commission to clarify its position with regard to Revised TCS-1 and loading guidelines in the Caribbean. The letter was filed outside of the comment period and will be treated as informal comments (47 CFR 1.41). Comsat confirms that it and AT&T successfully concluded the Agreement filed in CC Docket No. 87-67 on October 9, 1987. Comsat adds that if the terms of the Agreement are accepted by the Commission as consistent with the public interest and the Commission relies on the Agreement as a basis for withdrawing all loading guidelines affecting distribution of AT&T's IMTS service and the tariffs referenced in the Agreement enter into force, then Comsat maintains its concerns in both dockets will be met. In such circumstances, Comsat states it would not oppose construction of Revised TCS-1 and would oppose the imposition of loading guidelines in the Caribbean.

[42] *See* note 39, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Bell Atlantic Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD 7-1671

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 1987 Released: January 14, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. On August 10, 1987, the Bell Atlantic Operating Companies (Bell Atlantic)[1] filed a cost allocation manual pursuant to the *Joint Cost Order* [2] governing the accounting separations of Bell Atlantic's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, the manual is intended to be used on or after January 1, 1988, the same day that the revised Uniform System of Accounts (USOA) is scheduled to become effective. [3] The manual includes a list of Bell Atlantic's nonregulated activities, a list of activities Bell Atlantic treats as incidental to regulated for accounting purposes, information on affiliate transactions, information on employee time records, and information describing how each revised USOA account is allocated between regulated and nonregulated activities. As part of its cost allocation proposals, Bell Atlantic filed a a document styled Motion for Waiver[4] of Section 64.901(b)(4) of the Commission's Rules to allocate deferrable plug-in equipment on the basis of current use instead of allocating it based on forecasts that extend to the depreciable life of the equipment.[5]

2. Seven parties filed comments on the Bell Atlantic manual, and Bell Atlantic and the Maryland People's Counsel filed replies.[6] In addition to reviewing the pleadings, we have conducted our own review of the Bell Atlantic manual for consistency with the Commission's rules. We have concluded that while the Bell Atlantic manual is deficient in some respects, its format and content generally provide the Bureau with a sufficient understanding of the proposed cost allocation procedures to permit us to make an informed judgment as to the ability of the manual to prevent cross subsidy. We conclude that, overall, Bell Atlantic's manual provides sufficient assurance against the misallocation of costs and revenues to permit its implementation on January 1, 1988.

3. We require, however, that in specific instances Bell Atlantic specify in greater detail the procedures it intends to follow in allocating the costs and revenues of regulated and nonregulated activities, and in some cases, to correct ambiguities and omissions in its manual. We shall require Bell Atlantic to submit revisions to its manual, and we shall solicit public comment on them. Any revisions to the manual that result from the instant Order approving the manual or a subsequent order concerning the revisions will be made effective retroactive to January 1, 1988. Requiring that all amendments to the manual be retroactive eliminates the necessity of having a manual that is fully approved in advance of its implementation. We therefore approve Bell Atlantic's cost allocation manual subject to a number of conditions and requirements for the submission of further information.[7]

4. This Order is divided into three substantive sections. Section II discusses general issues, including portions of the manual that relate to incidental activities, nonregulated activities, affiliate transactions, and employee time keeping. Section III discusses issues raised in connection with the proposed apportionment methods and specific accounts. Section IV contains a discussion of the procedural issues raised by the parties, as well as information concerning the procedural requirements for updating cost allocation manuals.

II. GENERAL ISSUES

A. Overall Sufficiency

5. The *Joint Cost Order* listed five types of information that must be included in the cost allocation manuals: (a) a description of each nonregulated activity; (b) a list of all the activities the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pools) to which amounts in the account or subaccount will be assigned, and of the allocation method for each cost category (or pool).[8] In addition, the manuals must contain a

description of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the allocation of nonproductive time.[9]

6. MCI argues that Bell Atlantic's cost manual so lacks specificity and detail that effective analysis of the manual is impossible. According to MCI, the deficiencies in Bell Atlantic's proposed manual prevent it and other parties from evaluating the reasonableness of the cost allocation processes. MCI states that the Bell Atlantic manual relies on unspecified and undefined "analysis" as a basis for allocating numerous accounts.[10] Bell Atlantic argues in response that the manual contains all the information necessary to ensure that Bell Atlantic will properly allocate its costs.[11]

7. Our review of Bell Atlantic's manual, as well as the comments and reply comments filed in this proceeding, reveal that Bell Atlantic's manual is sufficient to discourage cross subsidy. While a number of ambiguities and omissions exist, the problems with the manual can be readily corrected with the filing of additional information and amendments. Each of the subject-matter areas required by the Commission has been addressed, although some are not discussed in the detail we would like. We do not believe that the defects in the Bell Atlantic filing require its rejection.

8. In making this evaluation, we have examined the Bell Atlantic manual in detail to determine if the information provided permits us to make an informed judgment that the proposed manual will discourage cross-subsidy. We have specifically explored cost allocation proposals to determine whether the Bell Atlantic manual provides us with a clear understanding of the basis upon which cost categories are formulated, and whether the manual provides a clear understanding of how the costs reflected in the cost categories are allocated between regulated and nonregulated activities. We find that, overall, the manual provides us with the level of understanding necessary to conclude that the manual procedures will discourage cross-subsidy. In a number of specific instances, however, additional information will be required before we can make this judgment for certain of Bell Atlantic's proposals. We therefore will require Bell Atlantic to submit additional information in the form of amendments to the manual, as a condition of our approval of its manual. We will permit public comment on any changes that Bell Atlantic makes to its manual as a result of this *Order*.[12] In order to provide guidance to Bell Atlantic in fashioning its amendments, we will address each of the issues raised by the commenting parties, along with additional issues we ourselves have identified.

B. Nonregulated Activities

9. The Bell Atlantic manual provides the required description of its nonregulated activities.[13] The manual divides nonregulated activities into four basic categories -- (a) customer premises equipment; (b) enhanced services; (c) license support activities; and (d) premises distribution services. Maryland argues that the descriptions of nonregulated activities fail to reference USOA accounts or the allocation issues presented by each activity.[14] According to Maryland, descriptions of a carrier's market philosophy with respect to nonregulated activities do not provide sufficient information to prevent cross-subsidy. In response, Bell Atlantic argues that there is no requirement in the *Joint Cost Order* to reference USOA accounts in the descriptions of nonregulated activities, and that the Commission did not require allocations of individual nonregulated activities, only aggregated activities. Bell Atlantic also states that providing such information may necessarily require the disclosure of proprietary information.[15]

10. We will not at the present time require Bell Atlantic to cross-reference its description of nonregulated activities with USOA accounts. Although such a reference would serve as an easy method of checking to make sure that Bell Atlantic has properly allocated all of the costs associated with its nonregulated activities, we find that the inclusion of a cross reference is unnecessary, given the relatively few nonregulated activities that Bell Atlantic presently provides. We may, however, require such a reference in the future. While it is true that the cost allocation requirements established by the Commission are intended to separate costs at a cost category or account level, and not at an individual activity level, a system that cross-references USOA accounts may prove helpful to the independent auditors, as well as to our own staff, in their efforts to ensure that the Commission's requirements will be met as the number of nonregulated activities grows.[16]

C. Incidental Activities

11. Bell Atlantic's manual also provides, as required, a list of nonregulated activities that are offered on an incidental basis to regulated activities.[17] In the *Joint Cost Order*, carriers were permitted to account for incidental activities as if they were regulated, provided that the activities meet the following quantitative and qualitative tests: (a) the activity must be an outgrowth of regulated operations; (b) it cannot constitute a separate line of business; (c) it must have traditionally been treated as incidental for accounting purposes; and (d) the total of all incidental activities must not exceed one percent of a carrier's total revenues.[18]

12. Maryland raises three issues with regard to Bell Atlantic's incidental services section.[19] First, Maryland argues that, the manual should reveal the nature of the intellectual property licensed or sold to third parties. Maryland states that depending on the type of property licensed or sold, Bell Atlantic may well violate the requirements that the incidental activity must be an outgrowth of regulated operations and must not be a separate line of business. Second, Maryland argues that Bell Altantic should justify its proposed treatment of sales of subscriber lists as an incidental activity, because Maryland believes these sales may constitute a separate line of business. Finally, Maryland states that Bell Atlantic has failed to demonstrate that it has traditionally treated these activities as incidental. Maryland also notes that it is impossible to judge from the manual itself whether the activities listed in fact account for less than one percent of revenues.

13. In response, Bell Atlantic argues that Maryland has provided no basis for its argument that Bell Atlantic has failed to follow the Commission's requirements concerning incidental activities. According to Bell Atlantic, the accuracy of the information will be verified by independent auditors.[20]

14. While the independent auditors will play an important role in ensuring that the Commission's requirements with regard to incidental activities are met, we believe that it is our responsibility in the first instance to determine whether the activities listed do in fact qualify under the requirements set forth by the Commission. Our review of the incidental activities section leads us to conclude addi-

tional information will have to be provided in several areas. First, we agree with Maryland that Bell Atlantic's licensing activities and sales of subscriber lists to directory publishers are activities that may possibly fall outside of the Commission's incidental activity qualifications. Bell Atlantic must therefore amend its manual to demonstrate that these activities are in fact incidental. Particular attention should be paid to explaining why these activities are outgrowths of regulated activities and do not constitute separate lines of business. In addition, for all its incidental activities, Bell Atlantic must demonstrate that it has traditionally treated these activities as incidental for accounting purposes.[21]

15. In addition to the concerns raised by Maryland, we have identified other aspects of the incidental activities section that must be addressed by Bell Atlantic in amendments to the manual. First, we require further information on alarm service monitoring and an explanation of why that service is considered incidental. In addition, some of the incidental activities may be provided in whole or in part to affiliates. To the extent activities such as employee training or leasing arrangements are provided to affiliates, Bell Atlantic should be treating the activities for accounting purposes as affiliate transactions. More information is needed about each of Bell Atlantic's proposed incidental activities to ensure that the activities have been properly classified as incidental.

D. Affiliated Transactions

16. The *Joint Cost Order* establishes specific rules governing the provision of assets and services to and from affiliates. These rules were created in order to discourage carriers from avoiding the cost allocation rules. If a carrier sought to avoid the application of fully distributed costing, it could, in the absence of the affiliate transaction rules, provide assets or services to or from a separate but affiliated company in a manner that would allow nonregulated operations to bear less than fully distributed cost. The affiliate transaction rules specify the valuation standards that will be applied in accounting for transactions between affiliates. Those rules vary depending upon whether the transaction involves assets or services.[22] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[23]

17. Pennsylvania argues that Bell Atlantic's treatment of affiliate transactions in its manual lacks necessary detail. According to Pennsylvania, the manual provides merely a "cursory" look at Bell Atlantic's proposed treatment of centralized services. Pennsylvania argues that Bell Atlantic should provide a description of how those costs will be identified, segregated into cost pools, and allocated. In addition, Pennsylvania recommends that the costs of centralized services be made subject to an audit similar to the audit required for Bell Atlantic's own cost allocations.[24] Maryland also argues that Bell Atlantic's treatment of affiliate transactions contains flaws. Maryland states that Bell Atlantic's manual contains no references at all to asset transfers between affiliates. Given the major internal reorganization presently underway at Bell Atlantic, Maryland argues that it is difficult to believe that no asset transfers will occur. Maryland also finds fault with the descriptions Bell Atlantic has included of the terms of the transactions, finding them to be too vague to permit analysis. In addition, the terms of the transactions are often governed by internal documents, Maryland asserts, which must be examined for conformance with the Commission's rules. Maryland also argues that the manual does not comply with the requirement that the cost of shared services be apportioned. Maryland argues that sequential affiliate transactions are possible in several instances, and that each transaction must be examined in order to ensure that the cost to the operating company is in accordance with the affiliate transaction rules. Finally, Maryland states that the "Network Services Group, which is involved in several affiliate transactions, should be described in relation to the transactions with that group.[25]

18. In response, Bell Atlantic argues that there is no basis in the *Joint Cost Order* for any of these complaints. It responds to Pennsylvania's argument by stating that its centralized services are provided by a single entity that uses the USOA and that will separate its costs in exactly the same manner as the operating companies, *i. e.*, pursuant to the Bell Atlantic manual. Maryland's criticisms are not well founded, Bell Atlantic argues, because the information sought by Maryland would require Bell Atlantic to disclose publicly each contract it has with an affiliate, a result at odds with the *Joint Cost Order*.[26]

19. Our review of Bell Atlantic's treatment of affiliate transactions confirms the commentors' view that it is impossible to determine whether Bell Atlantic is following the Commission's rules. For example, Bell Atlantic states that A Beeper Company Associates (A Beeper) provides exclusive marketing of the operating companies' paging services. We know, from the information provided in the manual, that the service provided by A Beeper is not provided to others and that its frequency is ongoing. Therefore, under Section 32.27 of the Commission's Rules, the cost of the service to be recorded on the operating companies books of account is determined by fully distributing the cost of the service, as if it were provided by the operating companies themselves. Bell Atlantic, however, indicates that the cost of the service is determined by reference to an "agency agreement" between A Beeper and the operating companies.[27] There is no way to determine from the manual itself that the agency agreement permits costs to be booked by the regulated companies in accordance with the Commission's rules.[28]

20. The same problems exist as to the other transactions listed by Bell Atlantic. In order to determine that Bell Atlantic is properly complying with the Commission's rules, we must be able to perceive what type of transaction is contemplated, and whether or not a generally-prevailing price for the asset or service exists. Without this information, it is impossible for us to verify that Bell Atlantic is following the Commission's rules.

21. We are sympathetic to Bell Atlantic's arguments that the cost manual need not include copies of the agreements between affiliates. The purpose of the cost manual is to provide a set of procedures for the companies to follow in accounting for regulated and nonregulated costs. We are evaluating the set of procedures for affiliate transactions that Bell Atlantic intends to follow in its affiliate transactions to determine compliance with the Commission's rules. As part of the manual review process, we will not verify that each transaction complies with the procedures set forth in the manual. That is a function to be undertaken in an audit to evaluate carrier compliance.

22. We find that Bell Atlantic must amend the affiliate transactions section of its manual to demonstrate compliance with the affiliate transactions rules adopted in the *Joint Cost* proceeding. Sufficient information should be provided to enable us to determine that Bell Atlantic understands and is following the Commission's rules.[29]

23. *Corporate Organization Chart.* In addition to the more general issues raised raised concerning affiliate transactions, Maryland argues that the corporate organization chart should list annual revenues or total assets next to each affiliate, as a relative measure of importance of the affiliate.[30] Maryland also argues that the chart fails to reflect Bell Atlantic's recently-announced reorganization. In response, Bell Atlantic states that the reorganization is still pending, and that it will provide a new chart when the reorganization is complete.[31]

24. We believe the concerns expressed by Maryland are misplaced. First, the Commission did not require any information regarding the relative size of affiliates. Such information serves no purpose in evaluating whether affiliate transactions comply with the Commission's rules. Second, no one has argued that the Bell Atlantic organizational chart was not current at the time the cost allocation manual was filed. As will be discussed, below, we are requiring Bell Atlantic to file an updated, amended manual in response to this Order. We are also establishing a procedure for the ongoing update of information contained in the manual. Bell Atlantic's obligations to maintain current information therefore do not pre-date the issuance of this Order.[32]

E. Employee Time Reporting

25. The *Joint Cost Order* permitted carriers to select from among several methods of recording employee time. The Commission reasoned that, since wages and salaries would serve as an important technique in the allocation of costs, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers were therefore free to propose the use of positive time reporting, exception time reporting, or time and motion studies.[33]

26. In its cost manual, Bell Atlantic has proposed using both positive time reporting and exception time reporting. MCI argues that the methods Bell Atlantic has elected to use are insufficient to prevent misallocation of costs in the case of time reporting by employees engaged in enhanced services planning. According to MCI, the carriers' enhanced services planning activities will involve planning for both basic network and enhanced services.[34]

27. Other parties also argue that the time reporting section fails to meet Commission requirements. Pennsylvania argues that Bell Atlantic should include in its manual the training materials it will provide its employees concerning time reporting.[35] Maryland argues that Bell Atlantic is not sufficiently precise in designating which employees will follow the two methods. Maryland also objects that Bell Atlantic's exception time reporting method should not be based on one-hour increments that may overlook substantial amounts of time spent on nonregulated tasks. Maryland also argues that Bell Atlantic should include more information on completing time sheets.[36]

28. Bell Atlantic's manual contains sufficient safeguards to ensure that the costs of enhanced services planning will not be misallocated. According to the information provided, many of those working on enhanced services planning will be using positive time reporting to capture their time, a methodology endorsed by the Commission. We therefore decline to mandate changes in time reporting for employees engaged in enhanced services planning.[37]

29. We also disagree with comments suggesting that Bell Atlantic needs to file additional information, such as training materials. The cost allocation manuals are intended to reflect carrier procedures in allocating costs. We will not, as part of the manual review process, concern ourselves with implementation of carrier procedures. That is an enforcement function we will undertake through audits of carrier practices.

30. For similar reasons, Maryland's argument that Bell Atlantic should identify which individuals use which time reporting systems is rejected. This level of identification would be far too detailed for the Commission's purposes. However, we do believe that Bell Atlantic needs to be more specific about which groups of employees use the various time reporting methods. While Bell Atlantic identifies groups of employees to which the various methods apply,[38] there is no indication of whether the time methods apply to support staff and management of these groups. Bell Atlantic must also provide a brief description of the functions performed by the employees it has assigned to the various groups so that we may assure ourselves that all employees have been included.

31. Finally, we reject Maryland's argument that one-hour reporting increments for exception time reporting are too large and may produce misallocations. The Commission specifically approved one-hour increments in the *Joint Cost Order*.[39]

F. Joint Use of Network Plant

32. *Central office equipment and outside plant.* In the *Joint Cost Order*, the Commission established that jointly-used network plant must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission elected to adopt a forecasted use approach in order to reflect the nature of capital investment decisions, *i. e.*, that investment decisions are made in anticipation of future use.[40] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.[41]

33. In a specific showing submitted with its cost allocation manual, Bell Atlantic requests that it be permitted to forecast two types of jointly-used plant based on periods different from those mandated in the *Joint Cost Order*.[42] Bell Atlantic proposes to allocate central office equipment, except radio systems, based on a two-year forecast, and radio systems and outside plant based on five-year forecasts. Bell Atlantic argues that use of the shorter forecast periods will contribute to the accuracy and reliability of its forecast results.

34. Bell Atlantic's proposal is opposed by four parties.[43] IBM opposes Bell Atlantic's request on the grounds that the proposal alters the investment risk balance established by the Commission in the *JointCost Order*. IBM suggests that any perceived unfairness in the forecast methodology adopted by the Commission could be remedied by applying a weighted average of projected regulated and nonregulated demand over the forecast period.[44] The D.C. Commission asserts that Bell Atlantic's showing does not

justify use of shorter forecast periods.[45] Maryland argues that permitting shorter forecast periods transfers investment risk from shareholders to ratepayers.[46] Pennsylvania argues that Bell Atlantic does in fact have the capability to make an extended forecast of network use, and already has a computer program available that will permit it to forecast demand for most, if not all, of an asset's depreciable life.[47]

35. In response, Bell Atlantic contends that the Commission's *Reconsideration Order* has rendered the issue moot, and that it intends to revise its manual to reflect the use of three-year forecasts.[48]

36. We agree with Bell Atlantic that the concerns of the commenting parties need not be addressed in light of the Commission's *Reconsideration Order*. Given that Bell Atlantic has decided to amend its manual to reflect the revised forecasting requirements, we will simply require Bell Atlantic to file revisions to its manual at the time it files the other changes and additions pursuant to this Order.[49]

37. *Deferrable Plug-ins*. In addition to its requests for a waiver of the forecast requirement for central office equipment and radio systems, Bell Atlantic also filed a Petition for Waiver of the Commission's cost allocation rules to permit it to allocate its investment in deferrable plug-in equipment between regulated and nonregulated services on the basis of the current relative use of the associated hard-wire equipment rather than upon forecasted relative use. For the reasons stated herein, we deny Bell Atlantic's peititon.

38. Bell Atlantic presents three reasons for its request. First, it states that deferrable plug-ins are different from other network plant investment because the plug-ins are not purchased pursuant to forecasts of demand, but only as they are needed. Thus, Bell Atlantic claims, it does not make long-range forecasts of the need for or usage of individual deferrable plug-ins. Second, Bell Atlantic argues, even if it made forecasts for plug- ins, such forecasts could not be compared to actual usage because the company has no system to track the usage of individual plug-ins, and it would be impractical to develop a cost-effective system. Finally, Bell Atlantic claims, the Commission's premise for allocating network plant investment, *i. e.*, that capacity is based on anticipated rather than current demand, does not apply to deferrable plug-ins.

39. Three parties -- the D.C. Commission, Maryland, and MCI -- commented on the Bell Atlantic petition. The D.C. Commission does not oppose the petition. It states that current usage may be a reasonable mechanism to allocate the cost of deferrable plug-ins, as long as end of period usage, rather than average usage, is used as a basis for the allocation.[50] Maryland opposes the petition, solely on the basis that it departs from the Commission's cost allocation rules.[51] MCI, while not opposing the petition, asserts that Bell Atlantic does not explain why its approach is preferrable to direct examination of the plug-in equipment's function in order to allocate regulated and nonregulated costs. Moreover, MCI states, Bell Atlantic does not distinguish between plug-in investment that has been integrated with the network and that which has not. At a minimum, MCI concludes, Bell Atlantic should be required to define more clearly the equipment that will be included in the plug-in equipment cost pool.[52]

40. In its reply, Bell Atlantic states that neither Maryland nor MCI refutes its showing that forecasted usage should not be used to allocate deferrable plug-in equipment.[53] It notes that Maryland's sole basis for opposing the petition is that the Commission required the investment costs to be allocated based on forecasts, and that MCI apparently ignored Bell Atlantic's explanation of why current relative use should be used. Additionally, Bell Atlantic states, it explained in its petition that both "connected" and "unconnected" plug-ins would be allocated on the basis of current relative use. Finally, Bell Atlantic asserts, neither party refutes the fact that deferrable plug-ins cannot be allocated based on forecasts of usage because Bell Atlantic does not make such forecasts.

41. Based on our review of Bell Atlantic's petition, and the comments submitted on it, we conclude that the waiver request should be denied. As we stated in an earlier *Memorandum Opinion and Order* in connection with plug-ins,[54] the description of plug-ins provided by Bell Atlantic conveys the clear impression that plug-ins will be playing an ever-increasing role in providing many of the different functions necessary to provide a communications channel. We noted that this evolutionary process carries with it the implication that plug-ins will become increasingly important in the future. We also stated that in our view, deferrable plug-ins appear to be a piece-part of the central office. With this in mind, we believe that deferrable plug-ins soon, if not already, will comprise the bulk of the centralized switching process, and as such, must be treated in the same way as other shared investment for cost manual purposes, *i. e.*, allocated between regulated and nonregulated services on the basis of forecasted relative use.

42. We are not persuaded by Bell Atlantic's argument that if forecasts of deferrable plug-ins are required, no practical, cost-effective method could be found to track actual usage. Based on our knowledge of telephone company practices, tracking of deferrable plug-in investment is not an impossible task. Even assuming the tracking of individual plug-ins is not practical, we are certain that Bell Atlantic could select a representative sample of plug-ins to track, and based on that sample, compare actual to forecasted use. We would accept such an approach if it were based on sound, acceptable statistical techniques. We therefore deny Bell Atlantic's Petition for Waiver and require it to amend its manual to reflect allocation of its shared investment in deferrable plug-ins.

43. *Forecasting procedures*. The *Joint Cost Order* established that carriers must forecast peak relative nonregulated usage of jointly-used network plant, but it did not establish forecasting procedure requirements. Rather than focusing on the process of forecasting peak relative nonregulated use, the Commission focused on the results of such forecasts. If actual nonregulated usage is greater than forecasted usage, carriers are required to reallocate plant from regulated to nonregulated activities at undepreciated baseline cost plus an interest charge, equivalent to the interstate rate of return.[55]

44. The Bell Atlantic manual provides information on its forecasting, tracking, and "true-up" of shared network investment.[56] Several parties object to Bell Atlantic's proposals. MCI argues that the Bell Atlantic manual fails to establish a penalty for underforecasting nonregulated usage.[57] Maryland argues that Bell Atlantic has failed to specify its methodology for determining when and how to make forecasts of peak relative nonregulated usage.[58] In addition, IBM argues that the true-up procedures proposed by Bell Atlantic will have the effect of translating the forecasting process into an allocation procedure based

on current relative use. IBM asserts that this will occur because Bell Atlantic is proposing to make annual adjustments to its forecasts.[59] Bell Atlantic does not specifically respond to these arguments.[60]

45. The Commission has not required a penalty to be imposed against carriers for underforecasting peak relative nonregulated use. Carriers are simply required to reallocate plant at undepreciated baseline cost plus an interest charge equal to the interstate rate of return. MCI's argument is therefore rejected.[61] Second, we reject Maryland's argument that the manual is deficient because Bell Atlantic failed to detail the methods it will employ in deriving forecasts. The Commission did not require this information to be included in the manual. Moreover, the reallocation rule provides sufficient incentive to discourage carriers from underforecasting nonregulated usage. We do not believe that there is any need to investigate forecasting methods at the manual review stage. Finally, we will not at this time order changes in manual provisions relating to true-up procedures. The true-up process, although mandated by the Commission, was not described in the *Joint Cost Order*. We anticipate supplying additional details about the true-up process as part of the *Automated Reporting Requirements* proceeding specifying joint cost reporting and tracking mechanisms.[62]

G. Avoidance of Tariffed Rates

46. The *Joint Cost Order* established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's Rules, is that nonregulated activities must be charged at a tariffed rate for services that are offered under tariff.[63] Western Union argues that the Bell Atlantic manual evidences an intent on the part of Bell Atlantic to avoid that cost principle, and instead allocate costs as if no tariff rate existed. According to Western Union, Bell Atlantic's manual charges a tariffed rate to its nonregulated activities only in the case of outside plant and circuit equipment that is related to subscriber lines and equal access. All interoffice outside plant and circuit equipment is allocated between regulated and nonregulated.[64] Maryland concurs with Western Union's arguments, and states that the Commission should not permit carriers to discriminate against competing nonregulated enterprises by obtaining services at a lower cost for their own nonregulated activities.[65] In its reply, Bell Atlantic argues that at present interoffice facilities are offered under tariff as part of an end-to-end service, and that no shared use of interoffice facilities presently exists.[66]

47. We believe that Western Union's argument illustrates an ambiguity in the manual. On each page of its cost allocation table for the circuit equipment and outside plant accounts, Bell Atlantic has stated that if tariffed services are available in the provision of nonregulated activities, tariffed rates will be charged. In its entries on the table itself, however, Bell Atlantic indicates it intends to allocate costs using assignment or attribution methods. Bell Atlantic has therefore created an ambiguity concerning the accounting treatment these carrier facilities will receive under the manual. [67] Bell Atlantic should therefore amend its cost allocation table, and the accompanying narrative description of it, to specify which of the cost pools will be directly assigned based on the tariff rate, as it does in the case of subscriber line facilities, and which will be allocated between regulated and nonregulated.[68]

III. ACCOUNT-BY-ACCOUNT ANALYSIS

48. Bell Atlantic's manual describes the methods it proposes to use to derive cost pools and the methods it proposes to use to allocate costs between regulated and nonregulated activities. This information appears in two places. First, Bell Atlantic provides a narrative description of its cost pool apportionment and cost allocation methods. Second, Bell Atlantic provides apportionment and allocation information in a table format.[69] Various parties have raised issues with respect to the cost pool apportionment and cost allocation bases for individual accounts contained in the manual. In addition, we have reviewed the manual and identified additional issues to be resolved. Before discussing these specific account issues, however, we will discuss some general problems that relate to more than one account.

A. Use of Function Codes

49. Throughout its manual, Bell Atlantic refers to "function codes" as the mechanism it proposes to use to assign costs to regulated or nonregulated activities. Several parties have objected to Bell Atlantic's use of function codes as a cost allocation mechanism. MCI argues that Bell Atlantic did not explain its function codes. Unless the function codes are specifically defined, MCI argues, their use will provide an opportunity for Bell Atlantic to misallocate costs.[70] Maryland agrees with MCI, arguing that function codes should be better defined, and that the Commission should consider requiring Bell Atlantic to submit its entire list of codes.[71] Maryland also argues that Bell Atlantic's use of function codes to allocate the revenue accounts should be viewed with skepticism, since nonregulated revenues are not susceptible of being assigned to regulated or nonregulated activities based on function codes.[72]

50. In response, Bell Atlantic argues that it uses function codes "to capture costs in more detail than is contained in USOA accounts and subaccounts." According to Bell Atlantic, the Commission did not require the carriers to submit such detail in their manuals.[73]

51. We will not require Bell Atlantic to list and describe each of its function codes as part of its cost allocation manual. The Commission did not require such a level of detail and we will not require it here. The commenting parties nevertheless raise an important issue. Bell Atlantic's use of the term "function code" as a means of describing how it will allocate costs between regulated and nonregulated activities appears to be misplaced. Wherever the term function code appears in the table of allocations, it is associated with direct assignment. Direct assignment is therefore the *cost apportionment* method. The reference to a "function code" describes, not the cost allocation method, but the method by which Bell Atlantic will identify the costs that compose the cost pool that will be directly assigned -- the *cost pool* apportionment method.

52. For example, in Account 2212, Digital Electronic Switching Equipment, Bell Atlantic establishes several cost pools that are either directly assigned to regulated activities or directly assigned to nonregulated activities. Several other pools are allocated between regulated and nonregulated activities based on allocation factors. For each pool that is directly assigned, Bell Atlantic lists the term "function codes" as the basis for the allocation to regulated or nonregulated activities. But the function codes are not an allocation basis. They merely serve to identify plant that is associated with the cost pool being directly as-

signed. Instead of listing function code as the allocator, Bell Atlantic should list "assigned to regulated" or "assigned to nonregulated."

53. The confusion that exists in the Bell Atlantic manual between cost allocation and cost pool apportionment is best remedied by the addition to the table of a column that explains the basis for apportioning costs into cost pools. We require this to be done for each cost pool provided in the manual, not just for those pools which the manual presently associates with the term "function codes." We will also require that Bell Atlantic amend its manual to delete the words "function code" from the cost apportionment column and replace it with words and phrases that describe the cost apportionment method to be applied. The addition of a cost pool apportionment column should provide us, as well as the independent auditors, with a clearer understanding of how Bell Atlantic proposes to apportion costs into pools and then allocate costs that are not directly assigned. In crafting its cost pool apportionment explanations, however, Bell Atlantic should not make bare references to "function codes." If function codes are used in the process of determining cost pools, they should be briefly described in the manual. Because in many cases different cost pools are allocated in different ways, understanding how the costs were identified is critical to understanding if the cost apportionment proposals are reasonable.

B. Other Cost Allocation Mechanisms

54. *Application of cost principles*. The Alarm Committee argues that Bell Atlantic has failed to follow the Commission's requirement that the costs of activities be linked to their causes. According to the Alarm Committee, Bell Atlantic's own definition of causal relationships indicates that costs will not be allocated based on cause, but depending on how the equipment is used.[74] The Alarm Committee cites as an example Account 2421, Subscriber Line Facilities, which the Committee argues should be allocated between regulated and nonregulated activities because both types of activities are the cause of the facility being in place. In response, Bell Atlantic argues that, at present, tariffed lines are the only way to access the network.[75]

55. The use of an end user subscriber line to access an enhanced service has always been viewed as part of the local exchange carrier's regulated service. This will still be true if the exchange carrier or an affiliate of the exchange carrier provides the enhanced service. Therefore, we will not require Bell Atlantic to allocate some of the subscriber line investment to nonregulated activities.

56. *Allocation of expenses*. Maryland complains that Bell Atlantic's methods of allocating expense accounts are confusing because Bell Atlantic simultaneously uses the terms "relative investment value" and "current use" of the related investment accounts for its expense allocations.[76] We agree that Bell Atlantic's formulation of this allocation is confusing. The terminology employed by Bell Atlantic appears to be the result of its attempts to create allocations for shared use of network plant when no shared use currently exists. If network plant would be shared, the expense allocation would be based on "relative investment value" of the related investment account. For the present, the expense allocation is based on current use of the related investment account. As we have stated elsewhere in this Order, Bell Atlantic must eliminate references to hypothetical allocations and revise its manual to reflect the current three-year period.[77]

57. *Undefined terminology*. MCI has raised concerns about the vague use of language in describing how costs are to be allocated.[78] Phrases such as "analysis of subsidiary records" are unexplained, according to MCI. Bell Atlantic does not specifically respond to MCI's argument.

58. Throughout its manual, Bell Atlantic uses phrases to describe its cost allocation proposals that are vague and unexplained. "Analysis of subsidiary records," "analysis of specific estimates," "specific journal entries," and "relative investment value" are examples of phrases that require more definition in order for us to determine that the allocations proposed are reasonable. We must have sufficient information for us to determine the precise meaning of an "analysis." If Bell Atlantic intends to look at every journal entry, it should say so. We find that use of the term "value" in "relative investment value" introduces a measure of ambiguity into the cost allocation process that must be eliminated. While we believe that Bell Atlantic is in fact referring to the relative regulated and nonregulated dollar amounts in the investment accounts, we cannot be certain unless the term is defined.

59. Several parties have specifically complained about the use of the term "weighted measurements" to allocate costs of network switching. Bell Atlantic's manual proposes to use "weighted call attempts" and "weighted terminations" to allocate the cost of common control and network equipment in its central office equipment accounts.[79]

60. The D.C. Commission and Maryland argue that Bell Atlantic has failed to explain how "weighted call attempts" will be used to allocate the costs of the common control switching investments cost pool.[80] Maryland also argues that the same ambiguity exists with the use of "weighted terminations to allocate network equipment.[81] The Alarm Committee also finds fault with these allocation methods, and recommends alternative allocation procedures.[82] Pennsylvania complains that the weighted measurements proposed by Bell Atlantic will overallocate costs to regulated activities because the measurements do not reflect central office processor usage.[83] In response, Bell Atlantic states that the weighted factors it is proposing are not yet fully developed and will not be developed until common control and network equipment is used for a nonregulated activity.[84]

61. While we are concerned that the weighted measurements proposed are not described in sufficient detail for us to pass judgment upon them, the hypothetical nature of the allocation does not compel us to decide whether the proposed allocators are reasonable. Instead, we direct Bell Atlantic to amend its manual to provide for cost allocations of nonregulated activities that it presently provides or plans to provide in the three-year forecast period beginning January 1, 1988 and eliminate references to speculative allocation methods.

62. *General allocator*. Maryland argues that Bell Atlantic should be required to demonstrate in its manual that its use of the general allocator is limited to 10 to 20 percent of its total costs.[85] We reject Maryland's request. Our review of the Bell Atlantic manual has focused in part on its use of the general allocator. Whenever use of the general allocator is questionable, Bell Atlantic will be directed to justify its use, or to develop another allocator.[86]

C. Accounts To Be Added

63. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proposals for each USOA account and subaccount.[87] This requirement, however, if interpreted literally, would have mandated the allocation of USOA accounts that are unrelated to measures of a carrier's costs and revenues. In the *Automated Reporting Requirements* proceeding, the Commission made public for the first time the list of accounts that would be subject to joint cost reporting.[88] That list was not available until after Bell Atlantic had submitted its manual. As a result, the Bell Atlantic manual does not include a number of accounts that the Commission has determined we must evaluate. Bell Atlantic will therefore be required to amend its manual to include all the accounts named in the *Automated Reporting Requirements* proceeding.

64. In addition to the accounts named in the *Automated Reporting Requirements* Order, we have determined that six accounts must be allocated. These accounts were either inadvertently omitted or must be added to the list to produce correct rate base computations. Those accounts are: Account 1439, Deferred Charges; Account 2004, Telecommunications Plant Under Construction - Long Term; Account 4120, Other Accrued Liabilities; Acount 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from Disposition of Land and Art Works.[89] Bell Atlantic has not provided apportionments for five of these six accounts.[90] In amendments to be filed with its manual, Bell Atlantic must include information on these accounts, and in particular, the portion of the accounts that are included in, or deducted from, the rate base.

D. Specific Accounts

Account 1439 - Deferred Charges and Account 4120 - Other Accrued Liabilities

65. Bell Atlantic has not proposed allocation methods for these accounts. When Bell Atlantic amends its manual to provide for these accounts, Bell Atlantic is directed to create several cost pools. For Account 1439, Bell Atlantic must separately provide for cost pools reflecting the cost of compensated absences and of deferred charges relating of equal access. For Account 4120, one cost pool shall be for liabilities related to compensated absences.

Account 2004 - Telephone Plant Under Construction

66. Bell Atlantic allocates investment in this account by direct assignment based on an "analysis of specific estimates." For its two shared use cost pools, Bell Atlantic also employs indirect attribution, allocating costs based on "relative investment value" of a related investment accounts.

67. In its comments, the Alarm Committee states that Bell Atlantic does not explain how "specific estimates" will be used to analyze the assignment of dedicated funds for nonregulated use, nor does it explain how the use of "forward looking allocators" will be used to distribute shared use construction projects.[91] According to the Alarm Committee, the "specific estimates" that Bell Atlantic proposes to use do not reveal whether the project is regulated, nonregulated or shared. Bell Atlantic responds that the Alarm Committee has not provided an alternative, and that an analysis of "specific estimates" will permit Bell Atlantic to identify the demand associated with the project.[92] Additionally, it states, its use of "forward looking" estimates for shared investment is in accordance with Commission requirements.

68. As an initial matter, we have no a reason to doubt Bell Atlantic's statement that an "analysis of specific estimates" will provide the type of information needed to assign costs to regulated or nonregulated operations. We will therefore not require Bell Atlantic to amend its methodology for directly assigning some of its costs in this account. We will, however, require Bell Atlantic to provide more information about the analysis it shall undertake, consistent with our previous statements concerning Bell Atlantic's use of vague and undefined language. We will also require amendment of manual provisions relating to "forward looking allocators."[93] In its cost allocation table, Bell Atlantic states that it will allocate costs in plant construction cost pools based on corresponding plant accounts, which are allocated based on "forward-looking allocators."[94] Apparently, Bell Atlantic's view is that any allocation based on a plant account is a "forward-looking allocator." We do not agree. As we have discussed at II., G., Bell Atlantic has created a series of hypothetical allocations for shared use of network plant that does not exist. We have directed Bell Atlantic to correct its manual to eliminate this ambiguity. Accordingly, Bell Atlantic must eliminate references to "forward looking allocators" that do not describe a forecast of relative usage for network plant that is currently shared or that will be shared during the three-year forecast period beginning January 1, 1988.[95] Once this is done, we do not object to Bell Atlantic basing its shared network plant construction pools on existing investment, although we may require Bell Atlantic to adopt another approach in the future if existing plant proves to be a poor allocator of plant that is under construction.[96]

Account 2006 - Non - Operating Plant

69. Bell Atlantic proposes to assign investment in this account directly to its regulated activities. The Alarm Committee and the D.C. Commission comment that Bell Atlantic assigns this account solely to regulated services without any consideration of future use of the facilities.[97] In the *Automated Reporting Requirements* proceeding, the Commission decided to exclude Account 2006 for the purpose of reporting cost allocation results. This finding is consistent with Account 2006's exclusion from the rate base and the fact that it does not enter the jurisdictional separations process. Accordingly, we will not resolve the issues raised with regard to the proposed allocation methods.

Account 2007 - Goodwill

70. Bell Atlantic's cost manual uses indirect attribution for this account based on the relative investment value in Account 2001. The D.C. Commission argues that this account should be allocated based on an analysis of the entries comprising the account.[98] Pennsylvania says that these costs should not be allocated to regulated unless Bell Atlantic makes a specific showing justifying the proposed allocation.[99] For the same reasons we cited in our discussion of Account 2006, we will not resolve the issues raised concerning Account 2007.

Accounts 2111 and 2121 - Land and Buildings

71. Bell Atlantic proposes to allocate land based on the "relative investment value" of buildings, while allocating buildings based on the "relative investment value" of central office equipment accounts (for one cost pool) or wages and salaries (for the other pools). The D.C. Commission states that while the allocation of plant-related land and buildings based on Bell Atlantic's related central office equipment investment accounts is proper, Bell Atlantic has not demonstrated that the mix of regulated and nonregulated services are the same for each plant account.[100] According to the D.C. Commission, Bell Atlantic should allocate the land and buildings associated with each specific plant account separately. Maryland argues that Bell Atlantic should directly assign land and buildings to nonregulated operations on the basis of occupied square footage and projected peak use of additional space, rather than relying on wages and salaries.[101]

72. In its reply, Bell Atlantic asserts that allocating land and buildings associated with a specific type of plant would be unnecessarily complex because it would essentially require the central office equipment cost pools to be disaggregated into three cost pools (switching, operator and transmission equipment).[102] Given the evolution in the design of central office equipment to include all three functions, Bell Atlantic argues, special studies would be required to relate each of those functions to occupied floor space, and those studies could not be done with much precision. Additionally, Bell Atlantic states, to the extent that there is a different mix of regulated and nonregulated services in each of the accounts, its methodology appropriately weights the allocation of building investment to reflect that difference.

73. In response to Maryland's argument, Bell Atlantic claims that investment in buildings cannot be directly assigned on the basis of occupied square footage if employees or equipment perform both regulated and nonregulated functions. Bell Atlantic states that its allocation does take occupied square footage into account, however, since it performs studies to determine floor space occupied by employees and equipment for each of the eight cost pools in Account 2121, and then allocates floor space occupied by employees based on wages, and floor space occupied by equipment based on investment. Finally, Bell Atlantic asserts, Maryland's suggestion to allocate building investment on the basis of projected peak use is inappropriate because under the *Joint Cost Order* only shared network plant, excluding buildings, is required to be allocated on the basis of projected usage.

74. We are not convinced that the D.C. Commission's suggestion to allocate investment in land and buildings by specific plant accounts would generate substantially more accurate results. We believe Bell Atlantic ought to be permitted to allocate the central office buildings pool as it has proposed. If Bell Atlantic's allocation results for this account appear to be substantially different from those of similarly-situated companies, we will explore Bell Atlantic's methods further.

75. We are more troubled with the issue raised by Maryland, and particularly Bell Atlantic's response to that issue. Bell Atlantic's reply to Maryland's request for a usage study of buildings indicates that Bell Atlantic already contemplates a usage study in order to apportion costs into cost pools. That information does not appear in the manual. Bell Atlantic should therefore amend its manual to include its complete proposal for the allocation of Account 2121. If it intends to employ a study, Bell Atlantic must disclose a sufficient amount of detail about the study so that we may ascertain its validity and reliability.

Account 2113 - Aircraft

76. Bell Atlantic uses the general allocator to allocate the investment in this account. The general allocator should be used only if a more cost causative allocator is unavailable or impractical. We believe Bell Atlantic can use specific records or logs to allocate the costs of this account. We therefore require it to develop a different allocation mechanism.

Account 2124 - General Use Computers

77. Bell Atlantic has divided this account into two cost pools. One pool is called "Computer Equipment Associated With Central Offices." Bell Atlantic must amend its manual to provide additional information on the composition of this cost pool. In its amendment, Bell Atlantic must explain why this cost pool is associated with this account, rather than with a related switching account.

Accounts 2211 through 2215 - Central Office Switching Equipment and Account 2220 - Operator Systems Equipment

78. Bell Atlantic proposes to allocate investment in switching equipment based on a variety of factors, some of which we have previously discussed.[103] The D.C. Commission requests that Bell Atlantic be directed to change its allocation mechanisms for much of its central office investment to reflect the use of switching investment at its "busy hour" period.[104] The D.C. Commission argues that a busy hour peak use measurement is more cost causative.[105] Bell Atlantic does not respond to the D.C. Commission's arguments.

79. We reject the D.C. Commission's suggestion. The Commission's forward-looking cost allocation requirements for shared network plant already incorporate measuring relative regulated and nonregulated usage at a point of peak demand. Under the Commission's rules, that point of peak demand is the point at which nonregulated use is greatest relative to regulated demand over a three-year period. We will therefore not require Bell Atlantic to incorporate peak usage measurements in its allocators for shared network investment that are inconsistent with what the Commission has required.

80. *Analog Switching.* The Alarm Committee states in its comments that Bell Atlantic's investment in Account 2211, Analog Electronic Switching Equipment, cannot be directly assigned to regulated and nonregulated operations because the engineering calculations and procedures it assumes Bell Atlantic will use cannot provide the necessary disaggregation of usage, and thus will not allow direct assignment.[106] In its reply, Bell Atlantic states that the Alarm Committee's assertion is not true, since some equipment that is already being manufactured, such as equipment which provides message storage service, can be identified as dedicated to regulated or nonregulated services.[107] Additionally, Bell Atlantic argues, as equipment becomes more modular in the future, it will be even more likely that individual items of equipment can be dedicated, and its manual correctly assumes that this equipment should be directly assigned to the approriate category whenever possible.

81. Based on the information provided to us by the commenting parties, we have no basis upon which to doubt Bell Atlantic's claim that some switching investment can be directly identified as having an exclusively regulated or nonregulated function. We have, however, ordered Bell Atlantic to provide more information to us regarding its cost pool apportionment basis.[108] This information should provide us with a sufficient basis to determine if exclusively nonregulated or regulated equipment exists and can be identified.

82. *Digital Switching*. The D.C. Commission and Maryland challenge Bell Atlantic's use of a 14 percent factor to allocate to nonregulated services its digital electronic switching costs used in the Public Data Network.[109] Bell Atlantic replies that this factor is based on FCC standards developed in 1985, and that there are no changed circumstances that would warrant a change in this allocator.[110]

83. We reject Bell Atlantic's use of a 14 percent allocator. The Public Data Network cost pool in Account 2212 includes the provision of protocol conversion service.[111] Under the Commission's requirements, shared network plant must be allocated based on Section 64.901(b)(4) of the Commission's Rules. That rule section requires carriers to forecast peak relative nonregulated use over a three-year period. The relative split between regulated and nonregulated usage at the point in time when nonregulated usage is greatest in comparison to regulated is the allocation factor to be applied. We require Bell Atlantic to comply with the Commission's rules.

84. *Electro-mechanical switching*. Bell Atlantic establishes two different cost pools in this account for each of the following types of investment: "Switching Equipment-Regulated," "Switching Equipment-Nonregulated," "Network Equipment," and "Deferrable Plug-Ins." Bell Atlantic does not explain the duplication. We require it to do so.

85. *Stored Program Control*. Bell Atlantic's manual contains a "stored program control" cost pool for Accounts 2211 and 2212. The D.C. Commission argues that Bell Atlantic does not explain how it identified investment in this pool.[112] Bell Atlantic argues that the investment can be identified by function code.[113]

86. We have previously discussed the ambiguities associated with using function codes to identify cost pools, and have directed that Bell Atlantic submit additional information concerning this process for each account in which it is used.[114] This additional detail should satisfy the D.C. Commission's concerns.

Account 2230 through Account 2232 - COE Transmission Equipment

87. Bell Atlantic will use direct assignment, direct attribution based on "derived channels," and "relative investment value" to attribute the investment in these accounts. The D.C. Commission states that Bell Atlantic's proposal to use "derived channels" as an allocator for several cost pools in this account assumes that the unit costs for regulated and nonregulated equipment are identical.[115] The D.C. Commission claims that this assumption is questionable. Bell Atlantic, in its reply, argues that the D.C. Commission fails to recognize that if a nonregulated service requires a different type of equipment (which might have a different unit cost), then the equipment is not shared, but dedicated, and no allocation is required.[116] Groups of facilities, Bell Atlantic argues, can only be shared if the transmission requirements of the regulated and nonregulated services are the same. It is therefore correct, Bell Atlantic concludes, to assume that the unit costs of shared equipment are the same.

88. While we agree with Bell Atlantic that groups of facilities should only be grouped into cost pools if the costs are homogenous, we are not satisfied that we have enough information on the use of "derived" channels to determine whether or not it is a meaningful allocation factor. Accordingly, we will require Bell Atlantic to provide a detailed description of the use of this factor to allocate costs.

Account 2311 - Station Apparatus

89. Bell Atlantic directly assigns the investment in this account to its regulated operations. However, the accounting treatment of station apparatus is extremely complex due to the Commission's decisions in its *Computer II Implementation* proceeding[117] and its *BOC CPE Relief Order*, [118] and the various options open to carriers in the provision of station apparatus as a result of these decisions. Bell Atlantic is therefore required to explain in the comment section of its table what it will be including in this account for station apparatus.

Account 2341 - Large Private Branch Exchange

90. Bell Atlantic has divided this account into three cost pools -- PBX-Centrex equipment, nonregulated miscellaneous non-PBX equipment, and network terminating wire transfers. The last two cost pools may not be properly included in this account. Bell Atlantic should explain what investment is included in these pools, and justify their inclusion in this account. The first pool, composed of "PBX-Centrex" equipment is assigned totally to regulated operations. We infer from that assigment that there is no nonregulated use of this investment. Bell Atlantic must confirm our understanding by amending the comments section of its manual to state affirmatively that no nonregulated use exists.

Account 2411 through Account 2431 - Cable and Wire Facilities

91. Bell Atlantic proposes to use direct assignment and attribution to allocate its outside plant accounts. For some cost pools, such as those involving subscriber line facilities, costs are directly assigned to regulated activities. Other cost pools, that contain interoffice facilities, are directly attributed to regulated or nonregulated activities based upon varying measures of capacity, such as equivalent channels. Still other cost pools are indirectly attributed to regulated or nonregulated activities based on the "relative investment value" of related investment accounts - *i. e.*, the cost of poles is directly attributed based on investment in aerial cable and wire. Pennsylvannia argues that the initial step, formation of the cost pools, is unexplained.[119] Pennsylvania contends that Bell Atlantic's cost pool apportionment appears to be made on the same basis as that used for jurisdictional separations purposes, *i. e.*, directly identify the interoffice facilities, while assigning the residual costs to subscriber line facilities. If this is the procedure used, Pennsylvania submits, the costs of nonregulated operations may be borne by ratepayers. To alleviate this

situation, Pennsylvania concludes, all cable and wire facilities should be considered interoffice facilities unless they can be identified otherwise.

92. Bell Atlantic states in its reply that it does indeed use jurisdictional separations procedures to identify cost pools.[120] It does so, it claims, because the company would incur tremendous costs in order to initiate and maintain a physical inventory of subscriber line facilties. The cost of such a program would in turn greatly increase the cost of service, Bell Atlantic argues. Additionally, Bell Atlantic states, Pennsylvania's concerns are misplaced because when either interoffice facilities or subscriber line facilities are used by nonregulated services, tariff rates will be charged wherever they exist, and therefore the costs of either type of facility will be borne by regulated operations.

93. Understanding how cost pools are derived is, as Pennsylvania observes, a critical part of our understanding of a carrier's cost allocation processes. Whenever all cost pools within an account are allocated so that the resulting allocations are identical, however, the methods of assigning costs to pools is less significant because the allocation results will be unaffected. The difficulty with Bell Atlantic's outside plant accounts is that the manual, on its face, appears to allocate cost pools differently. As we have discussed *supra* at II., G., Bell Atlantic is supplying hypothetical allocations of most of its network investment. Thus, despite the "allocation presented in the manual, outside plant usage by nonregulated activities will occur at a tariffed rate and will be treated as a regulated cost. We have directed Bell Atlantic to clarify by amendment to its manual when its network investment costs will be available at tariff rates, and to remove any ambiguities created by hypothetical allocations. This should address Pennsylvania's concerns.[121]

94. In addition, the D.C. Commission argues that the allocation basis for interoffice facilities would produce misallocations.[122] As we have discussed, above, the proposed allocator is for a hypothetical shared use of the facilities. We have directed Bell Atlantic to eliminate its proposed hypothetical allocations and to reflect in its manual the use of interoffice facilities for the current three-year forecast period.[123]

Account 2441 - Conduit Systems

95. Bell Atlantic has proposed allocating conduit systems on the basis of the "relative investment value" in Account 2422, Underground Cable. The D.C. Commission states that this allocation will result in no costs being allocated to leased conduit.[124] To remedy this, the D.C. Commission argues, Bell Atlantic should allocate costs to conduit that it leases to others based on duct miles in use, and then allocate the remainder (non-leased conduit) on the basis of Account 2422, Underground Cable. In response, Bell Atlantic argues that the small amount of cost involved does not justify implementing the D.C. Commission's approach, which would require separately identifying the conduit investment supporting leased conduit.[125] Furthermore, the leasing of conduit and pole space is an incidental activity, according to Bell Atlantic, and thus revenues are included in the regulated accounts.

96. The Commission permits carriers to treat certain nonregulated activities as if they were regulated, provided those activities qualify as incidental pursuant to the *Joint Cost Order*. [126] Bell Atlantic has stated that it considers the use of conduit leased to others to be incidental. If Bell Atlantic can make the further demonstrations required in this Order to justify its incidental treatment, we have no reason to require Bell Atlantic to separate conduit leased to others from its other conduit.

97. However, the questions concerning incidental treatment of conduit leased to others raise additional issues in the case of C&P of the District of Columbia (C&P). On January 30, 1985, the Commission issued an order authorizing C&P to construct a cable system within the District, and to lease cable space and pole attachments to the cable operator.[127] As part of its approval, the Commission ordered C&P to maintain separate books of account with respect to this activity. We believe that the Commission's subsequent action in the *Joint Cost Order*, establishing an integrated accounting system for regulated and nonregulated activities, implicitly superseded the prior requirement for separate books.[128] In addition, we believe that C&P's conduit leasing activity, as well as other activities involved in the maintenance and leasing of pole attachments to the District cable franchise, may not qualify under the qualitative and quantitative tests for incidental activities. Bell Atlantic should therefore provide us with additional information concerning C&P's cable activities, and amend the manual as necessary to conform with the *Joint Cost Order*. [129]

Account 2681 - Capital Lease

98. In its manual, Bell Atlantic has proposed to attribute capital leases to regulated or nonregulated activities based on an analysis of leased properties. Bell Atlantic's method therefore assumes that all capital leases can be associated with a regulated or nonregulated function. We do not believe that will always be the case. We therefore direct Bell Atlantic to amend its allocation of Account 2681 to employ direct assignment of its capital leases to regulated or nonregulated activities, and also to provide a cost pool for any capital leases that reflect joint use by regulated and nonregulated activities. This latter pool must be allocated by first classifying the leases by related USOA accounts, and then allocating the costs using the methodology in the related USOA accounts.[130]

Account 3100 - Accumulated Depreciation

99. Bell Atlantic proposes to assign dedicated plant in this account directly to regulated and nonregulated operations, and to attribute the shared use portion to regulated and nonregulated operations based on the "relative investment value" of related investment accounts. The Alarm Committee and Pennsylvania state that this procedure overallocates accumulated depreciation to nonregulated operations. [131] Pennsylvania argues that depreciation is a function both of initial booked cost and the length of time an asset has been in service. Accordingly, Pennsylvania recommends that Bell Atlantic be required to accumulate depreciation by plant account as it occurs. The Alarm Committee argues that it is illogical to allocate depreciation, which is a function of historic use, based on forward-looking allocations of investment. Bell Atlantic replies that the Commission considered these arguments in the *Joint Cost Order* and rejected them.[132]

100. In the *Joint Cost Order*, the Commission found that no specific action was required to remedy the problems associated with allocating the depreciation reserve.[133] The Commission stated that the revised USOA accounts provided a "highly disaggregated" set of functional plant categories that will minimize the pooling of old and new

plant. The Commission also provided that "[d]epreciation reserve accounts will also be maintained at this level of specificity." The *Joint Cost Order* rejected suggestions to adopt a vintage year tracking system, or any other more complex proposal than was already reflected in USOA accounting that attempted to match depreciation reserve percentages with allocation percentages. We therefore reject the suggestions of the Alarm Committee and Pennsylvania.

101. We nevertheless question the allocation approach advanced by Bell Atlantic for this account. The language of the *Joint Cost Order* requires that the depreciation reserve amounts be allocated according to their respective investment accounts.[134] Bell Atlantic has lumped "shared use investment into two cost pools, one for network plant and one for "other. The remainder of the reserve is directly assigned by function code. We do not believe Bell Atlantic's treatment of this account is in compliance with the *Joint Cost Order* and we require Bell Atlantic to amend its manual accordingly.

Account 5301 and Account 5302 - Uncollectibles

102. Bell Atlantic plans to attribute amounts in this account based on relative gross revenues. The D.C. Commission and Maryland argue that nonregulated activities might have higher levels of uncollectibles than regulated.[135] Pennsylvania states that Bell Atlantic should be able to determine separately uncollectible revenues for this account from regulated and nonregulated operations.[136] In its reply, Bell Atlantic asserts that the commentors ignore the fact that regulated and nonregulated service are included on the same bill and that uncollectibles result from the nonpayment of the total bill.[137] Under these circumstances, Bell Atlantic argues, it is reasonable to allocate uncollectible amounts on the basis or relative gross revenues.

103. We are uncertain, without knowing more about the carrier's internal accounting practices, as to the relationship that the amount of uncollectibles appearing on a carrier's books will have to its mix of activities. We nevertheless believe that an amendment to these accounts in necessary. Account 5301 reflects uncollectibles from telecommunications activities, while Account 5302 reflects uncollectibles from all "other" activities. Bell Atlantic has apportioned both based on gross revenues. We believe the accounts should be apportioned based on corresponding revenue accounts. Thus, for example, telecommunications revenues must form the basis for an allocation of telecommunications uncollectibles. Bell Atlantic must therefore amend its manual.

Account 6113 - Aircraft Expense

104. Bell Atlantic allocates expenses in this account to regulated and nonregulated services based on the "relative investment value" in Account 2113 - Aircraft. Maryland does not agree with Bell Atlantic's allocation procedures for this account because the related account, 2113, is based on the general allocator.[138] We agree with Maryland, and note that we have required Bell Atlantic to allocate investment in Account 2113 on the basis of flight records or logs.

Account 6121 - Land and Building Expense

105. Bell Atlantic has one cost pool for this account and allocates these expenses to regulated and nonregulated operations based on the relative investment value in Accounts 2111-Land, and 2121-Buildings. We do not believe that Bell Atlantic has sufficiently disaggregated this account to provide an accurate allocation between regulated and nonregulated services. We also do not believe that the rent Bell Atlantic pays necessarily bears any relationship to its investment in land and buildings. We will therefore require Bell Atantic to develop three separate cost pools for this account: the first for regulated expenses, to be directly assigned; the second for operating rents, to be directly assigned or attributed to regulated and nonregulated based on an analysis of the relative use of the rented asset; and the third for shared expenses, to be indirectly attributed based on the relative value of land and buildings owned and capitalized lease investments.

Account 6211 through 6441 - Maintenance Expenses - Network Plant

106. Bell Atlantic will allocate the expenses in these accounts based on relative investment value and direct assignment. The D.C. Commission argues that Bell Atlantic should allocate these expenses based on a study of the particular activity involved, while Maryland recommends using time and expense reporting.[139] In its reply, Bell Atlantic asserts that equipment maintenance is the same whether the equipment is regulated, nonregulated or both, and thus the expenses in this account should be allocated on the basis of investment.[140] 107. In the *Joint Cost Order*, the Commission stated that most expenses would be allocated based on corresponding plant accounts. The chief exception to the rule is maintenance expenses, which will be allocated based on current use of the investment.[141] We therefore disagree with suggestions to base plant-related expenses based on a study of the activity or time and expense reporting.

107. In reviewing Bell Atlantic's treatment of these accounts, however, we have noted the somewhat confusing treatment that maintenance expenses have received in the manual. It is not at all clear from the manual that maintenance expenses will be allocated based on current use, as distinguished from other types of expenses to be based on related investment. Bell Atlantic must clarify the allocation basis in amendments to its manual.[142]

Account 6341 - Large Private Branch Exchange Expense

108. Bell Atlantic has divided this account into two cost pools, PBX-Centrex Equipment expense and Nonregulated Miscellaneous Non-PBX Equipment expense. As we stated in our discussion of Account 2341, it is unclear why the second cost pool in included in this account. Bell Atlantic most justify its inclusion in the manual.

Account 6532 - Network Administration Expense

109. Bell Atlantic has two cost pools for this account. The first, Network Admiinistration expense, is directly asssigned based on salaries and wages, and the second, Support and General Administration expense, is based on "directly assignable." For the sake of clarity, Bell Atlantic should amend its section of its manual to read that the second cost pool is "assigned based on the Network Administration cost pool."

Account 6533 - Testing Expense

110. Bell Atlantic apportions this account into four cost pools. Two pools, Subscriber Line Testing expense and Public Telephone Testing expense, are directly assigned to regulated operations. Service Order Testing expense is attributed based an "analysis of service orders tested," and Interoffice Testing expense is attributed by "circuit counts." The D.C. Commission states that Bell Atlantic's allocation of the interoffice pool assumes that the testing expense will be equal per occurence regardless of whether it is for regulated or nonregulated operations.[143] The D.C. Commission argues that no foundation has been laid for the allocation basis proposed, and the adoption of the proposed method could result in an overassignment of expenses to regulated services. Bell Atlantic's response is that the requirement to test equipment is the same for regulated, nonregulated or both, and thus its procedures for allocating testing equipment expense is appropriate.[144] We believe that Bell Atlantic's proposed allocation of the interoffice pool reflects once again the problem of including hypothetical allocations in its manual. Bell Atlantic has stated elsewhere that there is no shared use of interoffice facilities currently functioning or planned. Therefore, there is no need to attribute interoffice testing expense to nonregulated operations. We direct Bell Atlantic to amend its manual accordingly.[145]

Account 6534 - Plant Operation Administrative Expense

111. In connection with this account, Bell Atlantic must clarify whether construction-related costs are cleared from this account before the allocation to nonregulated activities occurs.

Account 6535 - Engineering Expense

112. Bell Atlantic proposes to allocate expenses in this account based on the "relative investment value" in Accounts 2210, Central Office Switching Equipment; 2230, Transmission Equipment, and 2410, Cable and Wire Facilities. The Alarm Committee argues that these expenses should be allocated on relative projected not current, plant.[146] The D.C. Commission states that these expenses should be allocated in the same manner as it recommends for testing expense, and Maryland believes that these expenses should be allocated based on time and expense reporting.[147] Bell Atlantic responds to the Alarm Committee's argument that allocation of this account is already based on future plant, since the related investment accounts are allocated based on forecast use.[148] In response to D.C. Commission and Maryland, Bell Atlantic notes that this account contains only general engineering expense which is not chargeable to a specific undertaking or project, and thus is properly distributed over all plant investment accounts. Our review of this account satisfies us that Bell Atlantic is allocating the expenses reasonably. However, as with Account 6534, we note that Bell Atlantic must clarify whether construction-related costs are cleared from this account prior to any allocation to nonregulated activities.

Account 6561 - Depreciation Expense - Telecommunications Plant in Service

113. Bell Atlantic has one cost pool for this account, and allocates that pool based on the "relative investment value" of its network plant accounts. We are not satisfied with this procedure and will require Bell Atlantic to amend its manual to structure this account so that depreciation expense follows the investment accounts on an account-by-account basis, consistent with the treatment of depreciation mandated by the Commission for Account 3100.[149]

Account 6611 - Product Management Expense - and Account 6612 - Sales Expense

114. In its manual, Bell Atlantic provides three cost pools for each account. The first two pools are for management activities and general and support administration activities. The third pool is labelled "Residual Expense." Bell Atlantic must amend its manual to clarify what is included in these pools and why they are residual in nature. We also require Bell Atlantic to justify its use of the general allocator to allocate its "residual" pool. Depending upon the contents of this cost pool, Bell Atlantic may be able to propose a more cost causative allocator.[150]

Account 6613 - Product Advertising

115. Bell Atlantic divides this account into two cost pools. One is labelled "Same as Account," while the other is labelled "Residual Expense. We find this format confusing. If the first pool contains all of the account expenses, there can be no "residual." Bell Atlantic should amend its manual to make its methods clear.[151]

116. In addition, the D.C. Commission contends that Bell Atlantic has excluded nonproduct advertising costs, and that it is unclear if these expenses appear anywhere in the manual.[152] Maryland states in its comments that nonproduct advertising should be assigned to nonregulated activities.[153] Bell Atlantic responds to DC by stating that nonproduct advertising expense is found in Account 6722, External Relations Expense-Corporate Advertising Expense. [154] Responding to Maryland, Bell Atlantic states that its advertising is designed to sell all of the company's products and services, not just the nonregulated, and as such these expenses should be allocated using the general allocator. If Bell Atlantic has no Product Advertising expenses, then it must amend its table of accounts to say so. We also find that Bell Atlantic has properly included nonproduct advertising in Account 6722.

Account 6622 - Number Service

117. Bell Atlantic has incorrectly referred to this account as "Call Completion Services." It must amend its manual to use the correct USOA title.

Account 6623 - Customer Services Expenses

118. Bell Atlantic lists this account twice in its manual.[155] The first time the account is mentioned, Bell Atlantic allocates the costs of customer instruction and service order activities separately. The second reference provides for three entirely different cost pools, and refers to the first reference. As an initial matter, Bell Atlantic must consolidate its references to Account 6623.

119. The D.C. Commission argues that for two of the cost pools, Bell Atlantic fails to provide sufficient information on the proposed allocation mechanisms. According to the D.C. Commission, neither the "sample of account activity" used to allocate "Account Maintenance and Customer Billing" expense, nor the service center studies used to allocate "Service Order Activity" expense are explained.[156] Bell Atlantic reponds that the reasonableness of its methods is subject to annual audit.[157]

120. As we have previously discussed, the Commission delegated to us the responsibility of reviewing the cost manuals to ensure that the methods proposed are reasonable. The function of the independent auditor is to assess the implementation of the manual. Consequently, we need to know enough information about the allocation methods to satisfy ourselves that the proposals are reasonable. We require Bell Atlantic to provide additional information in its manual on the service center studies and sampling activities that it plans to perform in connection with this account, so that we may judge if the results of these efforts are accurate and reliable.

Account 6711 - Executive Expense

121. In its manual, Bell Atlantic proposes to use the general allocator to allocate costs in this account. We believe use of the general allocator alone is insufficient and may result in inaccurate allocations. We also believe that the cost of using direct assignment or attribution for portions of this account is low. We therefore direct Bell Atlantic to amend its manual to provide for more cost-causational allocation methods, or to justify in detail why it must resort to the general allocator.

Account 6721 - Accounting and Finance Services Expense

122. Bell Atlantic allocates the Depreciation and Valuation expense cost pool in this account on the basis of time and expense reporting. Pennsylvania states that this account should be allocated based on the distribution of plant.[158] Bell Atlantic replies that its depreciation studies are conducted for regulated purposes, so this expense should be assigned to regulated operations.[159] However, Bell Atlantic notes, it uses time and expense reporting in the event a study of dedicated nonregulated plant is undertaken, to insure that the costs of that study are directly assigned to nonregulated operations. Based on our review of Bell Atlantic's manual and reply comments, we are satisfied with its allocation of the expenses in this account.

Account 6722 - External Relations Expense

123. Bell Atlantic's manual allocates expenses in this account based on time and expense reporting. Pennsylvania states that these expenses should be allocated based on the general allocator.[160] In its reply, Bell Atlantic agrees with Pennsylvania and states that it will incorporate this change in its manual.[161] We disagree with the proposed change. Allocating expenses based on time and expense reporting is a far more cost-causative method of identifying expense. We direct Bell Atlantic to retain its original proposal.

Account 6725 - Legal Expense

124. Bell Atlantic apportions expenses in this account into "direct" and "other" cost pools, and proposes to allocate the former to regulated and nonregulated services based on time and expense reporting, while allocating the latter on the basis of the general allocator. The D.C. Commission in its comments states that expenses in the "other" cost pool should be allocated by a more direct means than the general allocator.[162] Bell Atlantic replies that it agrees with the D.C. Commission and revises its manual.[163] According to the revised treatment of Account 6725, some legal costs are allocated based on time and expense reporting, labor and personnel expense is allocated on the basis of wages and salaries, and property matters expense is allocated on the basis of investment. Bell Atlantic continues to rely on the general allocator to allocate overhead costs, e.g., law library and research. We object only to the allocation of its overhead costs. Bell Atlantic must allocate its overhead based on the relative regulated and nonregulated split that it has obtained through direct assignment or attribution. Bell Atlantic must amend its manual accordingly.

Account 6726 - Procurement Expense

125. Bell Atlantic has divided this account into two cost pools, one for "plant support" and the other for "non-plant support." The former is allocated based on the "relative investment value" of the network plant accounts, while the latter is allocated based on customer and corporate operations wages and salaries. We require Bell Atlantic to justify its selection of allocators. We believe that a better method of allocating these costs is to rely on the wages and salaries of procurement employees, since procurement expense probably bears little, if any, relationship to plant investment or the activities of other employees as reflected in their wages and salaries.

Account 6727 - Research and Development Expense

126. Bell Atlantic apportions the expenses in this account into two cost pools, specific project expense, which is directly assigned, and general projects expense, which is allocated using the general allocator. The D.C. Commission states that General Projects cost pool amount should be allocated on the basis of related primary accounts.[164] Pennsylvania comments that Bell Atlantic should provide information on how the cost pools are developed, and subject that information to public review.[165] In its reply, Bell Atlantic argues that general project expenses are immaterial and do not justify a special study to related general projects expenses to primary accounts.[166] Additionally, Bell Atlantic notes that it will use function codes to identify specific project costs, and that this information will be subject to the independent attest audit. We will not require Bell Atlantic to amend its treatment of this account. From our review of the manual and the comments, we are not convinced that its limited use of the general allocator will result in a misallocation of costs. We have, of course, already required Bell Atlantic to provide information on the development of its its pools.

Account 6790 - Provision for Uncollectible Notes Receivable Expense

127. Bell Atlantic allocates expenses in this account based on the general allocator. We direct Bell Atlantic to justify its use of the general allocator for this account and to consider alternative allocation methods.

Account 7220 - Operating Federal Income Taxes, Account 7230 - Operating State and Local Income Taxes, and Account 7250 - Provision for Deferred Operating Income Taxes

128. Bell Atlantic proposes to use "relative taxable income" to allocate its current income tax accounts, but proposes to use a different method to allocate its Account 7250 deferred taxes. For the deferred tax account, Bell Atlantic would evaluate the "assets, liabilities, or items of income that gave rise to the deferral.

129. Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are not consistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income, since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, Bell Atlantic's proposal to use "relative taxable income" as an allocator is unexplained. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in appropriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated -- income taxes. We direct Bell Atlantic to amend its manual accordingly.

Account 7240 - Operating Other Taxes

130. Bell Atlantic divides this account into four cost pools. One pool, labelled "Other Taxes" is allocated using the general allocator. We direct Bell Atlantic to justify its use of the general allocator for this pool, or to propose a more cost-causative method.

Account 7370 - Special Charges

131. Bell Atlantic proposes one cost pool for this account, which includes charitable contributions. In order to track the amount Bell Atlantic is claiming for contributions, we direct Bell Atlantic to isolate a "contribution cost pool" for this account.

IV. PROCEDURAL ISSUES

132. In this section we address a number of procedural issues affecting the manuals. These issues are: (a) the submission of revised manuals in compliance with this order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manuals.

133. *Revised manuals.* We have required Bell Atlantic to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed Bell Atlantic to submit additional information concerning its affiliate transactions, list of nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of Bell Atlantic's proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that determination on their compliance with Commission requirements would be based on a full record.[167] Similarly, we believe that our review of Bell Atlantic's amendments will be aided by public comment on the revision. Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.

134. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, Bell Atlantic must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[168] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

135. *Interim reporting and record retention.* The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements* docket.[169] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[170] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period of January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

136. We require that carriers on an interim basis retain all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

137. *Routine amendments.* In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. For example, it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

138. Based on an analysis of these factors, we have decided to adopt the following requirements for the update of manuals.[171] First, several categories of information require our attention before the manual is implemented. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties

seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[172]

139. Second, we will require that Bell Atlantic file any changes to its corporate structure in a timely manner.[173] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

140. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements in the *Joint Cost Order*. At the same time, it also minimizes the number of times Bell Atlantic must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

141. According, IT IS ORDERED that the Motion for Waiver filed by Bell Atlantic to allocate the cost of deferrable plug-in investment based on current use IS DENIED.

142. IT IS FURTHER ORDERED that Cost Allocation Manual, File Number AAD 7-1671, IS APPROVED, subject to the conditions set forth in this Order.

143. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual shall be submitted within 60 days from the release date of this Order.

144. IT IS FURTHER ORDERED that this Order shall be effective January 1, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock,
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Bell Atlantic Operating Companies are: The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies (of the District of Columbia, Virginia, Maryland, and West Virginia), the Diamond State Telephone Company, and New Jersey Bell Telephone Company.

[2] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (Reconsideration Order), *petitions for further recon. pending.*

[3] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[4] Requests for waiver of the Commission's rules are usually styled as a "petition" rather than a "motion." Carriers and others are encouraged to follow that form.

[5] Bell Atlantic also proposed to allocate central office equipment (except radio systems) based on a two-year forecast, while allocating radio systems and outside plant based on a five-year forecast. These proposals were made, not as part of the Motion for Waiver, but as part of a "special showing." *See Joint Cost Order*, 2 FCC Rcd at 1319-20.

[6] Comments were filed by: Maryland People's Counsel (Maryland); International Business Machines Corporation (IBM); Western Union Telegraph Company (Western Union); the Public Service Commission of the District of Columbia (D.C. Commission); the Pennsylvania Office of Consumer Advocate (Pennsylvania); the Alarm Industry FCC Advisory Committee (Alarm Committee); and MCI Telecommunications Corporation (MCI).

[7] Pursuant to the *Joint Cost Order*, the Commission originally contemplated approving the permanent, or "Part 32," manuals by Bureau order only if the permanent manuals differed materially from the interim, or "Part 31," manuals filed by the Bell Operating Companies (BOCs). *Joint Cost Order* at 1328. Because the interim manuals remain pending, we will issue separate orders for the BOCs' permanent Part 32 manuals.

[8] *Joint Cost Order*, 2 FCC Rcd at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[9] *Joint Cost Order* at 1321-22.

[10] MCI Comments at 1-3.

[11] Bell Atlantic Reply at 3.

[12] *See* Section IV, *infra*. If additional material we are requesting does not permit us to determine whether the cost apportionment or cost allocation methods meet Commission requirements, we will order Bell Atlantic to adopt a methodology of our own choosing, pursuant to our delegated authority to implement the manuals.

[13] Bell Atlantic Manual at Section 3.

[14] Maryland Comments at 7-8.

[15] Bell Atlantic Reply at 9-10.

[16] We are not persuaded by Bell Atlantic's argument that a cross-reference to USOA accounts may require the disclosure of proprietary information. We can see no reason why a cross-reference to USOA accounts for Bell Atlantic's current nonregulated activities would trigger a proprietary information claim. Of course, Bell Atlantic is free to demonstrate to us, if and when we do require a cross-reference, that proprietary information would be disclosed.

[17] Bell Atlantic Manual at Section 4.

[18] *Joint Cost Order* at 1328.

[19] Maryland Comments at 8-9.

[20] Bell Atlantic Reply at 10-11.

[21] We will not, however, require Bell Atlantic to associate specific revenue figures with each incidental activity. The size of the aggregated incidental activities, once they are identified, is a fact susceptible of easy verification by the independent auditors and our own monitoring efforts.

[22] *See Joint Cost Order* at 1335 and *Reconsideration Order* at 6295. Services must be valued at the prevailing price, if the service is generally available to the public. If it is not generally available, the cost of the service will be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules. For assets, transactions will also be recorded at the prevailing price, if one exists. If not, assets transferred from the affiliate to the carrier will be recorded at the lower of net book cost and

fair market value, while assets transferred from the carrier to the affiliate will be recorded at the higher of net book cost or fair market value. *Joint Cost Order* at 1343, 1345, *amended by Reconsideration Order* at 6308-09.

[23] *Joint Cost Order* at 1328.

[24] Pennsylvania at 15-16.

[25] Maryland Comments at 10-13.

[26] Bell Atlantic Reply at 7-9.

[27] Bell Atlantic Manual at 6.1-1 to 6.1-2.

[28] We also agree with Maryland that Bell Atlantic must clearly describe affiliate procurement of services from other nonregulated alliliates that are eventually provided to the operating companies, and the procedures Bell Atlantic will use to comply with the affiliate transactions rules with respect to these "chain" transactions.

[29] In addition, we note that Bell Atlantic failed to list one service that it is providing its affiliates - telelphone service. Some reference to this service should be included within the affiliate transactions section, together with the costing treatment dictated by the affiliate transactions rules.

[30] Maryland Comments at 9-10.

[31] Bell Atlantic Reply at 11.

[32] In the *Ameritech Order*, we examined the arguments for and against treating Bellcore as an affiliate, including the arguments made by Pennsylvania and Bell Atlantic. *Ameritech Permanent Cost Allocation Manual Order*, DA87-1886, adopted December 28, 1987 at paras. 11-14. In *Ameritech*, we determined that Bellcore would be treated as an affiliate of all the BOCs. Bell Atlantic must therefore amend its manual to include Bellcore as an affiliate.

[33] *Joint Cost Order* at 1321-22.

[34] MCI Comments at 6-7.

[35] Pennsylvania Comments at 14-15.

[36] Maryland Comments at 16-17.

[37] We require Bell Atlantic to update its employee time reporting section for compliance with the *Reconsideration Order*. *Compare* Bell Atlantic Manual at Section 8 at 8-9 *with Reconsideration Order* at 6293.

[38] Bell Atlantic Manual at 8-4.

[39] *Joint Cost Order* at 1321.

[40] *Joint Cost Order* at 1319.

[41] *Reconsideration Order* at 6288.

[42] Bell Atlantic's special showing was filed in advance of the Commission's adoption of the *Reconsideration Order*.

[43] These parties also submitted their comments on the issue in advance of the Commission's *Reconsideration Order*.

[44] IBM Comments at 1-12.

[45] D.C. Commission Comments at 4-5. The D.C. Commission also argues that Bell Atlantic should be required to project usage of that portion of network plant devoted to equal access and network reconfiguration instead of just assigning these costs to regulated activities. The D.C. Commission argues that direct assignment of these costs to regulated presupposes that there will be no nonregulated use of this investment in the future, an assumption that may or may not prove accurate. D.C. Commission Comments at 5-6.

[46] Maryland Comment at 18-19.

[47] Pennsylvania Comments at 1-8.

[48] Bell Atlantic Reply at 3-4.

[49] We will not, as the D.C. Commission suggests, require Bell Atlantic to allocate the cost of equal access and network reconfiguration investment. These costs are the result of regulatory requirements and may be assigned directly to regulated activities. In the event that Bell Atlantic devises a way to use this investment to offer a nonregulated service, the cost of the investment will have to be allocated pursuant to the forecasting process adopted by the Commission.

[50] D.C. Commission Comments at 14.

[51] Maryland Comments at 5.

[52] MCI Comments at 5-6.

[53] Bell Atlantic Reply at 13-15.

[54] *Petition for Waiver of Section 31. 2 - 20 (d) of the Commission's Rules to Permit the Expensing of Certain Plug-ins Costing $ 200 or Less*, 2 FCC Rcd 5896, 5897 (1987).

[55] *Joint Cost Order* at 1320.

[56] Bell Atlantic Manual at Section 9.

[57] MCI Comments at 7-8. In addition, MCI argues that the cost pools proposed by Bell Atlantic are too broad and therefore permit averaging to occur between types of equipment. According to MCI, underforecasting may never be detected unless the cost pools are redesigned. MCI Comments at 8.

[58] Maryland Comments at 5-6. Maryland also argues that so long as a nonregulated activity can earn a return greater than the interstate rate of return, there is insufficient incentive for the carrier to forecast nonregulated usage properly. Maryland's argument should have been raised in the reconsideration of the *Joint Cost Order*, and cannot be addressed here.

[59] IBM Comments at 7, n. 12.

[60] *But see* Bell Atlantic Reply at 3-4 (arguing that comments regarding forecasting have been rendered moot by Bell Atlantic's decision to comply with the Commission's rules, as revised on reconsideration, for forecasting all of its shared network plant).

[61] We also reject MCI's arguments that the cost pools proposed by Bell Atlantic will permit carriers to avoid reallocations. As will be discussed, *infra*, there are a very limited number of cost pools subject to forecasting, and therefore eligible for reallocation.

[62] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, *Report and Order*, 2 FCC Rcd 5770, 5775 (1987).

[63] *Joint Cost Order* at 1318.

[64] Western Union Comments at 1-5. Western Union also objects to permitting carriers to allocate the costs of jointly-used central office equipment and outside plant. Western Union argues that by permitting an allocation of cost, rather than requiring a tariffed charge, the Commission is opening the door to discriminatory pricing of carrier facilities. Western Union's objection was dismissed in the *Reconsideration Order*. In that order, the Commission stated that carriers would be required to charge a tariffed rate for services provided to nonregulated activities whenever a tariffed rate exists. The implementation of *Computer III* will provide tariffed rates for individual service components that are not available on a discrete basis today. Western Union's concerns are therefore better addressed in the *Computer III* implementation prodeeding. *See* Amendment of Sections 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), *Phase I Order*, *Report and Order*, 104 FCC 2d 958 (1986), *modified on reconsideration* 2 FCC Rcd 3035 (1987), *Third Computer Inquiry*, *Phase II Order*, 2 FCC Rcd 3072 (1987).

[65] Maryland Reply at 2-4.

[66] Bell Atlantic Reply at Attachment 1 at 5.

[67] A greater number of components of telephone service will be available under tariff after the implementation of the *Computer III* Open Network Architecture Plans. The *Computer III* orders require carriers to design "basic service elements" that will allow competing nonregulated enhanced service providers to pick and choose from among the features available on the network.

[68] Allocation of costs pursuant to Section 64.901(b)(2)-(4) must be employed only in the case of the unavailability of a tariffed rate or a shared use of network plant.

[69] All changes that we order to the cost allocation of USOA accounts should be reflected in amendments to both the narrative and the table, where applicable.

[70] MCI Comments at 3-4.

[71] Maryland Comments at 4.

[72] Maryland Comments at 6. *See also* D.C. Commission at 2-3, and Alarm Committee at 10.

[73] Bell Atlantic Reply at 5-6.

[74] Alarm Committee Comments at 4-5. *See also* Maryland Comments at 14 (arguing that some subscriber lines may be "specific" to an enhanced service).

[75] Bell Atlantic Reply at Attachment 1 at 5.

[76] Maryland Comments at 6-7. Bell Atlantic did not reply.

[77] Maryland also objects to allocating expense accounts based on current usage. Maryland at 6. Maryland argues that the Commission created the presumption that expense accounts should be allocated based on the proportion of regulated and nonregulated costs in the related investment account. Maryland has misinterpreted the Commission's *Order*. The Commission never required plant expense accounts to be allocated based on plant investment unless the plant investment is shared. *See Joint Cost Order* at 1320.

[78] MCI Comments at 3.

[79] The Bell Atlantic manual also proposes to use "weighted operator work seconds" to allocate one cost pool in Account 2220.

[80] D.C. Commission Comments at 3-4, 8 and 12, and Maryland Comments at 14.

[81] Maryland Comments at 14.

[82] Alarm Committee Comments at 10-11.

[83] Pennsylvania at 10.

[84] Bell Atlantic Reply at Attachment 1, 3, and 8.

[85] Maryland Comments at 14.

[86] *See , e. g.*, our discussion of Account 2113, Aircraft, *infra*.

[87] *Joint Cost Order* at 1328.

[88] *Automated Reporting Requirements*, note 62 *supra*.

[89] These accounts will be provided for in future releases of *Automated Reporting Requirements* reporting formats.

[90] Bell Atlantic should continue to provide an apportionment for Account 2004, even though the account was not listed in the *Automated Reporting Requirements* proceeding. We must evaluate how Account 2004 is treated in order to assess the reasonableness of the allocation for Account 7340, Allowance for funds used during construction.

[91] Alarm Committee Comments at 6-8.

[92] Bell Atlantic Reply at Attachment 1 at 1.

[93] *See* Bell Atlantic Manual at 7.1-3 to 7.1-4.

[94] *See id.* at 7.8-4.

[95] The identical language is used in several places in the manual. Bell Atlantic must eliminate the language in all cases.

[96] In reaching this conclusion, we have considered that Account 2004 is not a rate base account. We are only requiring it to be allocated for joint cost purposes because of its effect on Account 7340, Allowance for funds used during construction.

[97] Alarm Committee Comments 8 and D.C. Commission Comments at 6. *See also* Bell Atlantic Reply at Attachment 1 at 1.

[98] D.C. Commission Comments at 6.

[99] Pennsylvania Comments at 21. *See also* Bell Atlantic Reply at Attachment 1 at 1.

[100] D.C. Commission Comments at 7.

[101] Maryland Comments at 14.

[102] Bell Atlantic Reply at Attachment 1 at 2.

[103] *See supra* Section III, A. (function codes) and III., B. (weighted measurements).

[104] D.C. Commission Comments at 3, 7.

[105] The D.C. Commission also proposes that Bell Atlantic submit a list of the functions of each switch type and associated equipment. D.C. Commission at 7-8. The Commission did not require a list of equipment functions and we fail to see how submission of such a list will aide us in understanding Bell Atlantic's proposed cost allocations.

[106] Alarm Committee Comments at 8-9.

[107] Bell Atlantic Reply at 3.

[108] *See* Section III., A., *supra*.

[109] D.C. Comments at 8-9; Maryland Comments at 14.

[110] Bell Atlantic Reply at Attachment 1 at 3.

[111] *See* Bell Atlantic Manual at Section 3.2-2.

[112] D.C. Commission Comments at 8.

[113] Bell Atlantic Reply at Attachment 1 at 4.

[114] Section III., A., *supra*.

[115] D.C. Commission Comments at 9.

[116] Bell Atlantic Reply at Attachment 1 at 4.

[117] *Procedures for Implementing the Detariffing of Customer Premises Equipment*, CC Docket No. 81-893, 95 FCC 2d 1276 (1983), *modified on reconsideration* 50 Fed. Reg. 9016 (1985); *Second Report and Order*, 98 FCC 2d 814 (1984) (detariffing mobile CPE); *Third Report and Order*, 99 FCC 2d 354 (1984) (detariffing the independent local exchange carriers' state-tariffed CPE); *Fourth Report and Order*, 49 Fed. Reg. 47,265 (1984) (detariffing CPE owned by Western Union and the international record carriers); *Fifth Report and Order*, 49 Fed. Reg. 46,378 (1984) (addressing accounting procedures to be followed in detariffing CPE); *Sixth Report and Order*, 50 Fed. Reg. 1525 (1985) (establishing a framework for detariffing National Security and Emergency Preparedness (NSEP) CPE); and *Seventh Report and Order*, FCC 86-17, released January 23, 1986 (detariffing federally-tariffed CPE owned by the independents and NSEP CPE).

[118] *BOC CPE Relief Order*, 2 FCC Rcd 143 (1987), *as modified on recon*. FCC 87-389, released December 17, 1987.

[119] Pennsylvania Comments at 11-13.

[120] Bell Atlantic Reply, Attachment I, at 4-5.

[121] Pennsylvania is of course free to present its argument concerning cost pool apportionment at the time Bell Atlantic amends its manual to reflect a shared use for outside plant.

[122] D.C. Comments at 9. *See also* Alarm Committee Comments at 12 and Bell Atlantic Reply at Attachment 1 at 5.

[123] Also, Bell Atlantic must amend its table of accounts to state that it has no investment in Account 2425 - Deep Sea Cable.

[124] D.C. Comments at 10.

[125] Bell Atlantic Reply at Attachment I at 6.

[126] *See* supr a at para. 11.

[127] The Chesapeake and Potomac Telephone Company, FCC 85-48, released January 30, 1985.

[128] See Joint Cost Order at 1339 (rejecting non-unified accounting that would mimic structural separation).

[129] If C&P's cable activities cannot be justified as incidental, Bell Atlantic should amend its manual to provide separate treatment for C&P under the relevant accounts, as well as in its listing of nonregulated and incidental activities.

[130] Thus, a capital lease of land upon which Bell Atlantic has constructed a central office should be allocated in the same manner as land supporting a central office in Account 2111, Land.

[131] Alarm Committee Comments at 12-13 and Pennsylvania Comments at 13-14.

[132] Bell Atlantic Reply at Attachment 1 at 6.

[133] Joint Cost Order at 1326.

[134] Id.

[135] D.C. Commission Comments at 10 and Maryland Comments at 14.

[136] Pennsylvania Comments at 17-18.

[137] Bell Atlantic Reply at Attachment 1 at 6.

[138] Maryland Comments at 15.

[139] D.C. Comments at 10-11 and Maryland Comments at 15.

[140] Bell Atlantic Reply at Attachment 1 at 7.

[141] Joint Cost Order at 1320. In addition, non-plant related operating expensses are allocated directly, based on time and expense reporting or another relative use estimator.

[142] We also note that Bell Atlantic is allocating an "Account 6321" for customer premises wiring expense. However, there is no Account 6321 in the USOA. The investment account for inside wiring contains only previously- capitalized inside wire that is being amortized. Accordingly, there can be no current expense for that investment. Bell Atlantic must therefore delete Account 6321. Also, Bell Atlantic must state in the table of accounts that it has no investment in Account 6425-Deep Sea Cable Expense.

[143] D.C. Commission Comments at 11.

[144] Bell Atlantic Reply at Attachment 1 at 6. Additionally, Maryland argues that the testing expense for subscriber lines should be allocated between regulated and nonregulated operations. Maryland Comments at 15. We do not agree for the reasons discussed supr a.

[145] Also, as we have discussed previously in III, B., Bell Atlantic should provide more information on "Analysis of Service Orders Tested.

[146] Alarm Committee Comments at 13.

[147] D.C. Commission Comments at 11 and Maryland Comments at 16.

[148] Bell Atlantic Reply at Attachment 1 at 7.

[149] See Account 3100, supra.

[150] We caution Bell Atlantic to limit its use of the marketing allocator to a small percentage of its marketing costs. As in the case of the general allocator, the marketing allocator ratio is only meaningful if it represents a majority of total marketing expenses. Cf. Jo int Cost Ord er at 1318. If we find that the marketing allocator is used to allocate a large percent of marketing expenses, we will require carriers to amend their cost allocation procedures to maximize direct assignment and attribution.

[151] In amending its manual, Bell Atlantic must also justify its use of the marketing allocator as the basis upon which the residual expense is allocated, consistent with our discussion of Accounts 6611 and 6612, supra.

[152] D.C. Commission Comments at 13.

[153] Maryland Comments at 16.

[154] Bell Atlantic Reply at Attachment 1 at 7.

[155] Bell Atlantic Manual at 7.8-30 and at 7.8-31

[156] D.C. Commission Comments at 12, 13.

[157] Bell Atlantic Reply at attachment 1 at 8.

[158] Pennsylvania Comments at 18-19.

[159] Bell Atlantic Reply at Attachment 1 at 8.

[160] Pennsylvania Comments at 19.

[161] Bell Atlantic Reply at Attachment 1 at 8.

[162] D.C. Commission Comments at 12.

[163] Bell Atlantic Reply at Attachment 1 at 8.

[164] D.C. Commission Comments at 9.

[165] Pennsylvania Comments at 19-20.

[166] Bell Atlantic Reply at Attachment 1 at 9.

[167] Revised manuals shall be served on all parties to the Bell Atlantic manual proceeding.

[168] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[169] Joint Cost Order at para. 1328-29.

[170] Automated Reporting Requirements, supra at para. 46.

[171] We shall establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[172] A stay of the effectiveness of a proposed change to the manual shall not be for longer than 180 days.

[173] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BELLSOUTH CORPORATION'S — AAD 7-1677

Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs

MEMORANDUM OPINION & ORDER

Adopted: December 28, 1987; Released: January 14, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. On August 12, 1987, BellSouth Corporation (BellSouth)[1] filed a cost allocation manual pursuant to the *Joint Cost Order* [2] governing the accounting separation of BellSouth's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, the manual is intended to be used on and after January 1, 1988, the same day that the revised Uniform System of Accounts is scheduled to become effective. [3] The manual includes a list of BellSouth's nonregulated activities, a list of activities BellSouth treats as incidental to regulated for accounting purposes, information on affiliate transactions, information on employee time records, and information describing the allocation of each revised USOA account between regulated and nonregulated activities. In addition to its manual, BellSouth also submitted a "Specific Showing Relating to Forecast Period for Common Investment" to demonstrate that BellSouth should allocate shared network investment based on BellSouth's "normal planning period" for its various types of shared network investment. BellSouth states that use of its normal planning periods to forecast network plant usage would produce substantially more accurate results than would the lengthier forecasts required by the Commission's rules.[4]

2. Five parties filed comments on BellSouth's manual and BellSouth filed a reply.[5] In addition to reviewing the pleadings, the Bureau has conducted our own review of BellSouth's manual for consistency with the Commission's rules. We have concluded that although the BellSouth manual is deficient in some respects, the defects can be remedied through the submission of additional information, explanation, or is some cases, amendment of the manual's provisions. We shall require BellSouth to submit revisions to its manual, and we shall solicit public comment on the revisions. Depending upon responses to the information requests, additional changes to the manual may be ordered at a later date. Any amendments to the manual that result from the instant Order approving the manual or a subsequent order concerning the revisions will be made retroactive to January 1, 1988. Requiring that all amendments to the manual be retroactive eliminates the necessity of having a manual that is fully approved in advance of its implementation date. We therefore approve BellSouth's cost allocation manual subject to a number of conditions and requests for further information.[6]

3. This Order is divided into three substantive sections. Section II discusses general issues raised by the manual, including the narrative portions that relate to incidental activities, affiliate transactions, and employee time reporting. Section III discusses issues raised in connection with specific accounts. Section IV contains information concerning the update of BellSouth's manual and other procedural matters.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manual

4. The *Joint Cost Order* listed five types of information that must to be included in the cost allocation manuals: (a) a description of each of the company's nonregulated activities; (b) a list of all the activities to which the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories to which amounts in the account of subaccount will be assigned and of the basis on which each cost category will be apportioned.[7]

5. The Commission found that the level of detail reflected in the selection of cost categories would be governed by the degree to which a carrier is engaged in nonregulated activities. Moreover, the number of categories will be dictated by the costs of developing cost

categories and whether additional categories would in fact yield more accurate allocation results. Finally, the Commission noted that some degree of importance must be attached to the relative stability of cost categories in order for the cost allocation manuals to be administered on an orderly basis.[8]

6. MCI argues that BellSouth's manual does not thoroughly describe and define critical data and procedures employed in the costing process. MCI therefore suggests that BellSouth's manual cannot be effectively reviewed, and the manual does not provide an acceptable basis for future audit and oversight of the cost allocation process.[9] MCI cites a recent federal court opinion concerning the Bell Operating Companies' (BOCs') line of business activities[10] to emphasize that BellSouth (as well as the other local exchange carriers) have strong incentives to cross-subsidize to the benefit of their nonregulated services. The cost allocation manuals are the only check against such behavior, according to MCI, and this check will be virtually useless in the case of BellSouth if the Commission approves the BellSouth manual in its current form.[11]

7. The Citizens of Florida claim that BellSouth's manual is too detailed, and counteracts many of the strides made to simplify cost allocation procedures in the jurisdictional separations process, thereby minimizing the costs that the company incurs in its attempts to allocate cost.[12] The Citizens of Florida add that the BellSouth manual as developed appears unnecessarily costly to implement and maintain, and that BellSouth's development of cost pools appears to be excessive.[13] The Citizens of Florida argue that the manual would not be necessary if BellSouth had not diversified or had maintained separate subsidiaries and, accordingly, the cost of implementation and utilization of the manual should be assigned to the nonregulated portion of the company.

8. In its reply, BellSouth notes the conflicting nature of the arguments raised about the sufficiency of its manual. In response to MCI's complaint, BellSouth states that its manual contains the detail required for compliance with the *Joint Cost Order*. BellSouth claims the level of detail sought by MCI would be as excessive and suggests that had BellSouth included that level of detail, the administrative burden would increase significantly. In view of the *Joint Cost Order* requirements regarding independent attestation audits of the manuals, BellSouth states that the level of detail sought by MCI is simply not necessary.[14]

9. Our analysis of BellSouth's manual reveals a number of ambiguities and omissions, but we believe that these problems may be readily cured by the submission of additional information and amendment. Our assessment of the sufficiency of the BellSouth manual has focused on whether the manual includes the subject-matter areas mandated by the Commission, and whether cost allocation information is provided in enough detail for us to determine if cost allocations will be performed in a manner that minimizes the potential for cross subsidization. Cost manuals must provide a clear understanding of the basis upon which cost pools are formulated and of how the costs reflected in those cost categories will be allocated between regulated and nonregulated activities. In a number of specific instances, the BellSouth manual falls short of providing the clear level of understanding necessary to comprehend how cost allocations are being performed for all cost pools. In addition, while BellSouth's manual includes the subject-matter areas required by the Commission, the information provided is insufficient for us to determine whether BellSouth will be in compliance with the Commission's rules. The deficiencies, however, do not warrant rejection of BellSouth's manual. The addition of greater detail and explanation should serve to resolve most of our questions. The additional detail that we require BellSouth to submit should respond to MCI's concerns that the manual lacks detail and adequate descriptions. We will permit public comment on any changes that BellSouth makes to its manual as a result of this Order.[15] In order to provide guidance to BellSouth in fashioning its amendments, we will address each of the issues raised by the commenting parties, along with additional issues we ourselves have identified.

10. We also do not agree with The Citizens of Florida that the BellSouth manual is too detailed. As the Commission observed in the *Joint Cost Order*, the level of detail included in a manual represents a balancing process involving a number of criteria. While the Commission did point to the jurisdictional separations process as an example of the level of disaggregation of costs, at the time the Commission made its comparison the jurisdictional separations process was much more detailed than the current Part 36.[16] Moreover, jurisdictional separations serves a different regulatory purpose than cost allocations and the level of detail required by one may not be the level of detail required by the other.

B. Affiliate Transactions

11. The affiliate transactions rules were created to discourage carriers from avoiding the cost allocation rules by placing activities in a different corporate entity.[17] Rules governing transactions between a carrier and its affiliate are different depending upon whether the transaction involves a transfer of assets or the provision of a service.[18] Asset transfers between affiliates should be recorded at the prevailing price held out to the general public. If no prevailing price is available, asset transfers from the affiliate to the carrier should be recorded at the lower of net book cost or fair market value. Asset transfers to the affiliate from the carrier should be recorded at the higher of net book cost or fair market value. In the case of services, costs should also be recorded at the prevailing price if one exists. Absent a prevailing price, the cost of the service should be allocated pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules.[19] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, frequency of such transactions."[20]

12. At the end of each affiliated transaction description in BellSouth's manual, BellSouth states that the "amounts billed" will be in accordance with the Commission's affiliated transactions rules.[21] It is not clear, however, from reading BellSouth's descriptions which of the rules would apply. It is difficult in some cases to determine whether BellSouth is describing a transaction involving assets or one involving services. A few examples will illustrate the problem. The first transaction listed is labelled "Carrier Entities," and involves the provision of telephone service to nonregulated affiliates.[22] The explanation describes a service provided at tariff rates, which is generally available to the public, and which is ongoing in frequency. We therefore have sufficient information to demonstrate that this transaction fully complies with the affiliate transactions rules.

13. The second set of BellSouth affiliate transactions involves the operating companies' relationship with the holding company.[23] The descriptions show that the holding corporation provides a host of corporate support functions to the operating companies, and we can infer that the frequency of the transactions is ongoing. However, although it is possible to infer that no generally-available price is available for these services, BellSouth has not affirmatively stated that the nature of services provided is exclusive to the BellSouth corporate family. Thus, we cannot ascertain how service costs ought to be recorded. We are also troubled by BellSouth's statement that some facilities are "shared" between it and the holding company. From the text of the manual, we are unable to conclude how the cost of these "shared" facilities are treated for accounting purposes. BellSouth must provide additional information concerning its affiliate transactions in order for us to discern what type of transaction is involved. Only then can we reach some judgment on BellSouth's conclusory statements that the transactions are in compliance with the rules.

14. Similar problems exist as to the other affiliate transactions in BellSouth's manual. Without the information necessary to determine which of the Commission's rules applies, it is impossible for us to make a determination that BellSouth has correctly represented that the transactions do comply with the requirements of the *Joint Cost Order* and *Reconsideration Order*. The absence of such information will also impede the auditability of the manual, since auditors would be left with the initial problem of determining whether BellSouth is following the correct affiliate transactions rule. We believe that BellSouth must therefore amend its manual to include more specific information on the nature, terms and frequency of its affiliate transactions with a view toward providing us with sufficient information to determine that it understands, and will comply with, the Commission's rules.[24]

15. Finally, we will require BellSouth to comply with the Commission's requirements to submit a "chart" of its corporate structure.[25] BellSouth has submitted only a list of affiliates so that it is impossible to understand the corporate relationships that exist. We require BellSouth to amend its manual accordingly.

C. Incidental Activities

16. The *Joint Cost Order* described miscellaneous activities that cannot be classified as regulated but that have traditionally been recorded in regulated books of account as a matter of convenience as incidental activities. The Commission recognized that a number of such activities exist. The *Joint Cost Order* required carriers to include a list of incidental activities in their manuals along with a justification for treating these activities as incidental.[26] The four criteria for classifying an activity as incidental are: 1) the activity must be an outgrowth of regulated operations; 2) the activity cannot constitute a separate line of business; 3) the activity must have been traditionally treated as regulated for accounting purposes; and 4) the sum total of all incidental activities must not exceed one percent of a carrier's total revenues.

17. In its manual, BellSouth provides a list of its incidental activities, together with a brief description of each activity. BellSouth represents that each of the activities listed meets the Commission's qualifications. In order for us to determine that BellSouth's conclusions are correct, more information on these activities is required. First, BellSouth needs to demonstrate whether each activity meets the Commission's criteria. For example, nowhere has BellSouth demonstrated that an incidental activity has traditionally been treated as incidental for accounting purposes. BellSouth must amend its manual to make the showing required in the *Joint Cost Order*.[27] Moreover, some of the incidental activities listed may be activities which are provided to affiliates and should therefore properly fall under the scope of our affiliate transactions rules. More information is needed to determine whether the activity is properly designated as incidental. For example, under "Miscellaneous Services," BellSouth must provide an explanation of whether "Sales of Software" or "Training Activities" are being provided to affiliates. BellSouth is required to revise its affiliate transaction section accordingly.

D. Time Reporting

18. The *Joint Cost Order* permitted carriers to select from among several methods of recording employee time. The Commission reasoned that, since wages and salaries would serve as an important technique in the allocation of costs, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers were therefore free to propose the use of positive time reporting, exception time reporting, or time and motion studies.

19. BellSouth's manual provides a variety of information concerning its time reporting requirements. According to the manual, BellSouth will utilize both positive time reporting and exception time reporting, depending upon the work functions of its employees.

20. We have determined that two additional types of information must be added to this section of BellSouth's manual. First, BellSouth must clearly specify the time reporting increments it will use, both for exception time and positive time reporting. Second, BellSouth must provide additional information on the personnel that are required to time report. It is unclear from the text of the proposed manual whether all BellSouth employees are included in one of the time reporting methods. BellSouth must amend its manual to address these concerns.

E. Avoidance of Tariffed Rates

21. The *Joint Cost Order* established a hierarchy of cost allocation principles for carriers to follow in formulating their cost allocation proposals. The first principle, contained in Section 64.901 of the Commission's rules, is that nonregulated activities should be charged at a tariffed rate for services that are offered under tariff.[28] Western Union argues that the BellSouth manual evidences an intent on the part of BellSouth to avoid that cost principle, and instead allocate costs as if no tariff rate existed. According to Western Union, BellSouth's manual charges a tariffed rate to its nonregulated activities only in the case of outside plant and circuit equipment that is related to subscriber lines and equal access. All interoffice outside plant and circuit equipment is allocated between regulated and nonregulated.[29] In its reply, BellSouth argues that it will provide tariffed services to nonregulated activities at tariffed rates.[30]

22. We believe that Western Union's argument illustrates an ambiguity in the manual. The BellSouth manual contains a number of hypothetical allocations of network

plant that may at some time in the future be shared by regulated and nonregulated activities.[31] Until a shared use develops, however, BellSouth indicates it will provide network plant to a nonregulated activity pursuant to the tariff rate if a tariff exists.[32] But in its cost allocation tables, BellSouth has not explained when tariff rates apply. Instead, BellSouth has provided only for forecasted measures of use, as if the plant were currently being shared. BellSouth has therefore created an ambiguity in the manual concerning the accounting treatment these network facilities will receive. BellSouth must therefore amend its cost allocation table, and the accompanying comments, to specify current allocation methodologies based on its current nonregulated activities. Investment directly assigned based on the tariff rate should be clearly listed, as well as proposed allocation methods for investment that is not presently available under tariff.

F. Joint Use of Network Plant

23. *Central office equipment and outside plant.* In the *Joint Cost Order*, the Commission established that jointly-used network plant must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission elected to adopt a forecasted use approach in order to reflect the nature of capital investment decisions, *i.e.*, that investment decisions are made in anticipation of future use.[33] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.

24. BellSouth has submitted a "Specific Showing Relating to Forecast Period for Common Investment," requesting that it be permitted to forecast its jointly-used network plant using a "normal planning period instead of depreciable life.[34] BellSouth argues that its normal planning periods are substantially shorter than the depreciable life of network investment and therefore will reflect assumptions and conditions far more accurately than forecasts made over longer periods of time. BellSouth also argues that the Commission's cost allocation requirement for shared plant investment is not in the public interest because it: (a) frustrates the Commission's goal of equitable sharing of costs; (b) denies the ratepayers benefits which would result from network integration and corresponding reduction in costs; and (c) reduces any efficiencies which might result from the joint use of common assets. BellSouth adds that with uncertainty in the telecommunications environment, it is more realistic to allow carriers to forecast over normal planning periods. Several commenting parties objected to BellSouth's approach to forecast jointly-used network plant.[35] IBM comments that BellSouth has ignored the Commission's rule that central office equipment and outside plant costs be allocated between regulated and nonregulated activities based upon their peak relative nonregulated usage. IBM argues that the Commission's decision to reduce the forecast period from depreciable life to three years did not provide a license for carriers to seek forecast periods so short that the allocation approaches a "current use" allocation.[36] In response, BellSouth argues that IBM's objections are moot in view of the Commission's decision to shorten the forecast period.[37]

25. The *Reconsideration Order* reduced the length of the forecast period for shared network investment from depreciable life to three years in recognition of the practical difficulties of forecasting relative usage over a lengthy period.[38] The Commission also established that carriers seeking to forecast shared network plant for a period shorter than three years would have to make a specific, detailed showing to justify a shorter forecast period. Carriers seeking to use forecast periods shorter than three years are required to (a) prove that the relevant engineering planning period is less than three years; (b) demonstrate that the planning and deployment process is not merely an activation of capacity already in place but not yet in service; (c) demonstrate that the use of a shorter forecast period will result in substantially more accurate forecasts and therefore more accurate cost allocations; and (d) demonstrate that the costs of implementing the shorter periods do not outweigh the benefits.[39]

26. We decline to approve the use of "normal planning periods" to forecast shared network plant. We believe that the Commission's decision to reduce the forecast period for common network plant from depreciable life to three years substantially alleviates the problems BellSouth states it will have in making lengthy forecasts. Furthermore, BellSouth has not met the tests for reducing the forecast period below three years, assuming the "normal planning periods" are less than three years. We direct BellSouth to amend its manual to comply with the three year forecasting period adopted in the *Reconsideration Order*.

G. Other Issues

27. *Forecasting procedures.* The *Joint Cost Order* established that carriers must forecast peak relative nonregulated usage of jointly-used network plant, but it did not establish forecasting procedures requirements. Rather than focusing on the process of forecasting peak relative nonregulated use, the Commission focused on the results of such forecasts. If actual nonregulated usage is greater than forecasted usage, carriers are required to reallocate plant from regulated to nonregulated activities at undepreciated baseline cost plus an interest charge, equivalent to the interstate rate of return.[40]

28. MCI suggests that BellSouth's manual relies on usage forecasts for its allocation of investment costs without fully defining the forecasting process. Under these circumstances, MCI maintains that BellSouth will have almost total freedom to forecast usage as it sees fit, without the threat of effective review and challenge from outside parties.[41] BellSouth responds that its forecasting process is described in full in its manual.[42]

29. We decline to order changes to BellSouth's manual because it fails to describe in detail the procedures to be used to forecast usage of shared network investment.[43] The Commission did not require detailed information of the forecast methodology to be included in the manual. We, therefore, do not believe that at the manual review stage there is any need to investigate forecasting methods. Accordingly, we will not require further explanation of this process, except to the extent of understanding the unit of measurement that the carrier has proposed.

30. *True - up mechanisms.* MCI argues that BellSouth's manual does not provide a clear and effective true-up mechanism to reconcile forecast usage with actual usage. MCI also argues that BellSouth's manual fails to establish any penalty for underforecasting nonregulated use and that BellSouth will have every incentive to engage in such underforecasting.[44] BellSouth does not respond to MCI.[45]

31. MCI's arguments misconstrue the requirements of the *Joint Cost Order*. Once a carrier predicts peak relative nonregulated usage of network plant, the carrier is required to track the actual nonregulated usage of the plant to discover if the forecast has underestimated actual usage. If an underestimation did occur, the carrier is required to reallocate at undepreciated baseline cost, plant that had originally been designated as "regulated," pursuant to the original forecast, to the nonregulated activity. In order to discourage carriers from underestimating nonregulated usage, and thereby shifting the investment risk to regulated entities, the Commission also required that the carrier's nonregulated activities compensate the regulated operation by paying an interest charge equal to the carrier's authorized interstate rate of return on the plant to be reallocated. In the *Joint Cost Order*, the Commission stated that this interest charge would operate to discourage underestimation of nonregulated usage of network plant. However, the Commission did not require that any "penalties" over and above this interest charge be paid by the nonregulated activity.[46] MCI's argument is therefore without basis.

32. We also disagree with MCI's argument that BellSouth has failed to include information concerning the true-up procedure in its manual. The true-up process has been established by Commission action and is not subject to the discretion of carriers. Accordingly, we do not require BellSouth to include more information on true-ups.[47]

III. ACCOUNT-BY-ACCOUNT ANALYSIS

33. BellSouth's manual provides descriptions of the bases for apportionment it will use to derive cost pools, as well as the bases for allocating cost pools between regulated and nonregulated operations. The manual also provides BellSouth's proposed Cost Apportionment Tables that list costs by USOA account. The table identifies the USOA Part 32 accounts, the cost pools, the bases for apportionment to cost pools, the bases for allocation between regulated/nonregulated, cost definitions, and any comments BellSouth had concerning its methods. Various parties have raised issues with respect to individual accounts and the cost pools contained in the table. In addition, we have reviewed the table and identified additional issues to be resolved. Before discussing specific account issues, however, some general problem areas have been identified that relate to multiple accounts.

A. Identification of Cost Pools

34. Several parties complain that the methods BellSouth employs to derive cost pools will permit misallocation of costs. MCI argues that, even for those major categories likely to contain substantial joint and common costs, BellSouth's cost allocation processes rely on ill-defined cost pool apportionment bases. MCI refers to the cost pools identified for the central office switching equipment accounts, which BellSouth states it will identify pursuant to a "network model." According to MCI, BellSouth does not explain the network model.[48] AT&T also argues that BellSouth's cost pool apportionment processes for its network plant accounts have no supportive rationale or justification. AT&T and MCI state that BellSouth has not explained its "work related" and "investment related" cost pools in its central office equipment and outside plant expense accounts. AT&T argues it is impossible to evaluate whether the costs in these pools are allocated reasonably unless the pooling process is explained.[49] The Citizens of Florida argue that BellSouth's manual appears to be an effort to return to the complicated types of cost allocation procedures that BellSouth and other companies supposedly attempted to reform and simplify in the area of jurisdictional separations. The Citizens of Florida maintain that BellSouth's manual consists of cost pools that are the functional equivalent to a jurisdictional separations category, and will result in an expensive and burdensome implementation procedure.[50]

35. BellSouth responds simply that it has "carefully considered various bases available for apportionment of cost into cost pools with each account and included the most appropriate basis of apportionment of these costs in its Manual."[51]

36. We agree that BellSouth's explanation of the process it uses to identify cost pools is in many cases vague. Throughout its manual, BellSouth refers to its "network model" as the mechanism that determines how costs are grouped into cost pools. The "network model," however, is given only a single sentence definition in the manual.[52] Furthermore, BellSouth's use of the "network model" method of cost pool apportionment is in most cases a hypothetical apportionment that will not be employed until a shared use of plant develops. BellSouth must describe in its cost allocation table the cost pool apportionment methodology it proposes to employ currently for each account. In addition, we agree with AT&T that BellSouth must explain the distinction between "work-related" and "investment-related" pools in its network plant expense accounts. In providing its explanation, BellSouth must indicate which of the pools reflect maintenance operations.[53]

37. We do not agree with the arguments made by The Citizens of Florida. The *Joint Cost Order* describes the Commission's expectations of cost pool detail in the manuals.[54] As we have previously discussed, the number of cost categories contained in a manual is a product of a number of considerations, including the number of nonregulated activities offered, the cost of identifying additional pools, and the degree of stability required.[55] We therefore do not find the level of detail in BellSouth's manual to be excessive and further conclude that the number of pools is generally in compliance with the Commission's expectations in the *Joint Cost Order*.

Direct Assignment of Costs

38. In its manual, BellSouth states that the cost allocation tables do not include most costs that can be directly assigned to regulated or nonregulated operations "at the time the transactions are recorded in the original books of entry."[56] According to BellSouth, its manual is designed to reflect only those costs that cannot be directly assigned by use of "unique codes" associated with the costs.[57] Costs that cannot be identified and related to a cost objective (*i.e.*, regulated or nonregulated), become subject to the manual and are directly assigned by functional analysis, attributed, or otherwise allocated.

39. The Citizens of Florida object to BellSouth's failure to include most directly assignable costs in its manual. The Citizens of Florida also argue that there are several accounts that are susceptible to direct assignment to nonregulated activities, but that the manual presently provides only for assignment to regulated activities.[58] Finally, The Citizens of Florida state that whenever directly assignable

costs cannot be identified by "unique codes" and BellSouth has proposed to use functional analysis to make an assignment, the functional analysis required is expensive, time consuming, subjective and prone to inaccuracies. In response, BellSouth argues that its manual does maximize direct assignment of costs.[59]

40. We require BellSouth to amend its manual to include all of its Part 32 costs and revenues required pursuant to this proceeding, including those costs that can be directly assigned by "unique code." The purpose of the cost allocation manual is to provide a regulatory check on the ability of carriers to apportion their costs between regulated and nonregulated operations. The manual must therefore reflect all of a carrier's costs and revenues that we must evaluate to ensure that the Commission's requirements are being met. Excluding an unspecified amount of costs and revenues from the manual does not provide us with sufficient information to ensure that the Commission's rules are being followed.

41. Furthermore, the process that is used to identify costs for direct assignment must also be explained in amendments to the manual. BellSouth has said only that it uses a "unique code" to establish which costs can be directly assigned without functional analysis. We must have some additional understanding of this process in order to judge whether the apportionment process is reasonable. While we do not require BellSouth to include a complete list of the codes it uses, it should provide some explanation of what the codes include for each account that employs this cost pool apportionment basis.[60]

42. In addition, we find that the analysis to be performed in order to directly assign costs if a "unique code" is unavailable, is not unduly burdensome, as The Citizens of Florida suggest. As BellSouth states, direct analysis of these directly assignable costs is normally restricted to "one time" entries.[61]

C. Other Allocation Issues

43. *Indirectly attributable costs.* The Citizens of Florida argue that BellSouth has employed indirect attribution hundreds of times in its manual, and that "if there were an error or misallocation, its effect would permeate through the allocation system."[62] The Citizens of Florida do not object to specific accounts that employ indirect attribution.

44. We disagree with the argument raised by The Citizens of Florida. Indirect attribution is a proper mechanism for allocating a cost when a more direct relationship between the cost and its cause is unavailable. In many instances in the BellSouth manual indirect attribution is the most logical means of allocating a cost. Furthermore, in our own review of BellSouth's cost allocation proposals, we have analyzed each allocator proposed and have required necessary amendments.

45. *General allocator.* The Citizens of Florida argue that BellSouth has relied too frequently on the general and marketing allocator in its manual, and that more cost-causative methods of allocation exist.[63] They state that use of the general allocator will tend to bias allocation results to the benefit of nonregulated activities. BellSouth responds that its use of the general allocator is limited to five cost pools, and that it uses the marketing allocator only for nine additional cost pools.[64]

46. Our review of BellSouth's manual does not reveal a general tendency on the part of BellSouth to employ the general allocator or marketing allocator if such an allocator is not required. When the Commission adopted a general allocator in the *Joint Cost Order*, it recognized that some costs involved in joint regulated and nonregulated operations are unattributable. BellSouth's proposed manual generally restricts its use of the general allocator to unattributable costs. Nevertheless, in our review of the cost allocation proposals, we have examined BellSouth's use of the general allocator, and have directed BellSouth to amend its manual or provide additional information whenever we believe questions exist as to its use.[65]

47. *Undefined terminology.* BellSouth's cost apportionment table generally provides a useful summary of its proposed cost pool apportionment and cost allocation methodologies. For specific accounts and cost pools, however, BellSouth has failed to provide the level of detail necessary for us to make a judgment as to whether its cost pool apportionment or cost allocation bases are sound. In many cases, the amendments we will require BellSouth to make are in the nature of a clarification. In other cases, we simply need additional information in order to make a determination about the apportionment or allocation basis. In still other cases, we have questions about the allocators being proposed.

48. First, there are several bases for apportionment or allocation which require clarification. These methodologies involve an "analysis" of activity within a USOA account. From the descriptions provided by BellSouth, it appears that in most cases the "analysis" involves a transaction by transaction analysis of the activity in the account. Whether such a detailed level of scrutiny is in fact contemplated is nowhere spelled out in the manual, however. For example, "analysis of underlying transactions" is used to apportion costs into cost pools for several investment accounts. There is no description of the analysis to be performed. While it is possible to infer that BellSouth intends to examine each and every transaction reflected in the account, in order to make an informed judgment about BellSouth's proposed methodology, we need to know exactly what BellSouth means.

49. This same issue arises with respect to "analysis of leasehold improvements," "analysis of intangibles," "identified by function through machine utilization and other statistics," "measures of current work activity," "identified from detailed data supporting journal entry," "direct analysis of specific reporting codes," "functional analysis," "analysis of advertising campaign expenses," "based on time studies," "detailed functional analysis of expenses as tracked by campaign," "analysis of call completion activity," "analysis of service order activity," "analysis of bill lines printed," and "directly assigned to regulated based on detail supporting data."[66] In each case, BellSouth should amend its manual to describe exactly what it contemplates in performing the proposed allocation. We will address other problems identified with undefined allocators on an account-by- account basis, below.

D. Accounts To Be Added

50. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proposals for each USOA account and subaccount. [67] This requirement, however, if interpreted literally, would have mandated the allocation of USOA accounts that are unrelated to measures of a carrier's rate of return. In the *Automated Re-*

porting Requirements proceeding, the Commission made public for the first time the list of accounts that would be subject to joint cost reporting.[68] That list was not available until after BellSouth had submitted its manual. As a result, the BellSouth manual does not include a number of accounts that the Commission has determined we must evaluate. BellSouth will therefore be required to amend its manual to include all the accounts named in the *Automated Reporting Requirements* proceeding.

51. In addition to the accounts named in the *Automated Reporting Requirements* Order, we have determined that six other accounts must be allocated. These accounts were either inadvertently omitted or must be added to the list to procure correct rate computations. Those accounts are: Account 1439, Deferred Charges; Account 2004, Telecommunications Plant Under Construction - Long Term; Account 4120, Other Accrued Liabilities; Acount 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from Disposition of Land and Art Works.[69] BellSouth has not provided apportionments for five of these six accounts.[70] In amendments to be filed with its manual, BellSouth must include information on these accounts, and in particular, the portion of the accounts that are included in, or deducted from, the rate base.[71]

E. Specific Accounts

Account 1439-Deferred Charges and Account 4120-Other Accrued Liabilities

52. BellSouth has failed to propose allocation methods for these accounts. When BellSouth amends its manual to provide for these accounts, BellSouth must create several cost pools. For Account 1439, the cost pools shall be for deferred charges related to compensated absences and for deferred charges related to equal access. For Account 4120, one cost pool shall be for liabilities related to compensated absences.

Account 2002-Property Held for Future Telecommunications Use and Account 2003-Telecommunications Plant Under Construction-Short Term

53. BellSouth provides one cost pool for each of these accounts, to be allocated based on its allocation of Telecommunications Plant in Service by account. We believe that BellSouth can assign a significant amount of this investment directly to regulated or nonregulated operations based on the intended use of the investment. Any shared or common costs could then be allocated based on the corresponding plant account. BellSouth is therefore directed to amend its manual accordingly.

Account 2112-Motor Vehicles

54. BellSouth proposes to apportion this account into two cost pools, "Plant Support" and "Customer, Corporate Operations Support, and Plant Nonspecific." "Plant Support" would be allocated to regulated and nonregulated based on the wage portions of plant specific construction and expenses for the outside plant accounts and information and origination/termination plant accounts. "Customer, Corporate Operations Support, and Plant Nonspecific" would be allocated based on the customer, corporate, and plant nonspecific operations salary and wage expenses. However, in the comments column for this account BellSouth states that "usage can be determined by logs, surveys and/or motor vehicle records." Apparently, BellSouth proposes to employ actual measures of use to apportion costs between the two cost pools. If BellSouth has the mechanisms in place to track usage of motor vehicles through a record-keeping system, it is quite likely that the records would reveal the extent of nonregulated usage in these pools. Thus, the apportionment and allocation bases proposed in the manual would be unnecessary. BellSouth is directed to amend its manual to employ actual usage records, or to demonstrate that its records will not support that type of allocation methodology.

Account 2113-Aircraft

55. BellSouth states that this account will be divided into two cost pools, "Executive" and "General Use," based on the primary intended use of the aircraft as determined from flight logs and passenger manifests. For the first cost pool, the allocation to regulated and nonregulated service is based on executive salary and wages, and the second, plant nonspecific and customer and corporate operations salary and wage expenses. If BellSouth can apportion cost into cost pools using flight records, then it ought to be able to allocate those costs between regulated and nonregulated activities based on the same review of flight records. Therefore, BellSouth is required to revise the allocation of Account 2113 or to explain why such a review would not be a reasonable method for the allocation of these costs.

Account 2114-Special Purpose Vehicles

56. BellSouth proposes to apportion this account into two cost pools, "Plant Support" and "Customer, Corporate and Plant Nonspecific" based on the relative investment value of plant support and nonplant support special purpose vehicles, respectively. The allocation of cost between regulated and nonregulated activities would then be based on either plant specific salary and wage expenses or customer, corporate, and plant nonspecific salary and wage expenses. However, BellSouth states in the comments column that "usage can be determined by surveys and/or special purpose vehicle records," apparently referring to the method by which it will identify and separate investment for the two cost pools. We once again raise the question of why usage records cannot be employed to allocate costs between regulated and nonregulated activities. BellSouth must amend its manual accordingly or explain and justify its current methodology.

Account 2121-Buildings

57. BellSouth has proposed to aportion costs into pools by relying on "floor space studies." In order to determine whether the proposed apportionment mechanism will produce reasonable results, BellSouth must provide additional detail on its studies. BellSouth must disclose if more than one type of study is to be conducted, how often floor space usage will be studied, whether sampling techniques will be used that meet accepted statistical procedures, and the criteria by which floor space will be designated as belonging to a cost pool.

Account 2122-Furniture and Account 2123-Office Equipment

58. BellSouth proposes to allocate these accounts based on wages and salary. Again, BellSouth states in its comments to these accounts that "usage can be determined from surveys and/or furniture property records. BellSouth must amend its allocation methods or justify its proposal.

Account 2124-General Purpose Computers

59. BellSouth states that the cost pool entitled "Noncentralized Data Processing Computers" contains unattributable costs that will be allocated using the general allocator. We believe that a more cost-causative allocator can be found to allocate this cost pool. We are requiring, therefore, that BellSouth apply a more cost causative allocator or provide justification of its use of the general allocator.

60. In addition to our concern, MCI notes that the cost pools for this account are "identified from detailed data supporting journal entry" without describing what these detailed data are.[72] As we have previously discussed, we have found many cost apportionment and cost allocation terms to be poorly defined, including this one. We therefore require BellSouth to provide further information describing how these cost pools will be derived for this account and also for any other account in the cost manual that uses similar language.

Account 2211-Analog Electronic Switching and Account 2215 Digital Electronic Switching-Electromechanical Switching

61. BellSouth apportions these accounts into several cost pools. The analog and digital switching accounts have similar cost pool structures. Both include cost pools for equal access investment, "processor" investment, "memory" investment, "all other line related" investment, "all other usage related" investment, and a "common" pool for residual investment. In addition, the digital account contains a "packet switch" cost pool. Several of the cost pools employ forecasted usage measurements to allocate the investment in the pools, a method indicative of a shared use of network plant. The electromechanical investment is organized into fewer pools, and also provides for projected usage measurements.

62. The Citizens of Florida argue that BellSouth's allocation proposals are inconsistent with BellSouth's arguments in jurisdictional separations proceedings that favor simplified allocation mechanisms.[73] The Citizens of Florida also object to the allocators BellSouth has proposed for its cost pools. According to The Citizens of Florida, BellSouth does not justify the allocators or explain their reasonableness and their cost.

63. MCI states that BellSouth never justifies why "projected words or memory and "projected packets converted" are the best possible, or even acceptable, bases for allocation of digital electronic switching investment.[74] BellSouth replies that MCI's characterization is without merit and that BellSouth carefully considered various bases available for allocation with each account in the manual.[75]

64. We have previously rejected the argument that the carriers' cost allocation proposals must be identical to jurisdictional separations procedures, and we will not repeat the analysis here. Of greater significance to the manual review process is that most of the proposed allocation mechanisms apparently are not intended for current use, but for some shared use that has yet to be developed. As we have previously discussed, BellSouth must amend its manual to remove these hypothetical allocators. Their presence in the manual tends only to create ambiguity about how costs are to be allocated for the present. From the list of nonregulated activities presented by BellSouth, it appears that only one cost pool in these accounts actually represents a shared use of network investment -- the packet switch pool in Account 2212. We agree with MCI that the allocator for this pool --"projection of number of packets converted" --needs more explanation.[76] Apparently, BellSouth hopes to employ a tracking device to determine which are regulated and which are nonregulated. We require BellSouth to submit more information concerning its ability to track these costs.

Account 2220-Operator Systems

65. BellSouth proposes to divide Account 2220 into two cost pools - "Other" and "Common." The common cost pool is allocated "in the same proportion as total supported investment." BellSouth must explain this allocator to make clear what the "supported investment" is.[77]

Account 2341-Large Private Branch Exchanges

66. BellSouth has directly assigned all investment in this account to nonregulated activities. We infer from this assignment that there is no regulated use of this BellSouth account. BellSouth must confirm our understanding by amending the comments section of the table to state affirmatively that no regulated use exists.

All Cable and Wire Facilities - Accounts 2411, 2421, 2422, 2423, 2424, 2426, 2431 and 2441

67. BellSouth proposes to allocate the cost of outside plant between regulated and noregulated activities for each of these accounts. AT&T attacks the allocation method proposed by BellSouth because it measures minutes of use and does not attempt to capture distance sensitivity.[78] We will not repeat our objections to BellSouth's use of hypothetical allocations for these accounts. Given our decision to require amendment to the manual to reflect current conditions, there is no purpose in addressing AT&T's concerns.[79]

Account 2681-Capital Leases

68. BellSouth proposes to apportion this account into four cost pools: "buildings," "motor vehicles," "computers" and "other." It further proposes to allocate these cost pools to regulated/nonregulated activities in the same proportion as the similar investment accounts were allocated. This allocation method assumes that the leased equipment is used for regulated and nonregulated purposes in the same proportion as the similar investment owned by BellSouth. We are not certain that leased equipment is used in the same way as equipment that is owned. Therefore, we are requiring that BellSouth attempt to directly assign this investment, and if direct assignment is not possible, to allocate between regulated and nonregulated activities using the same methodology as the similar investment rather than in the same proportion of the similar investment.

Account 2682-Leasehold Improvements

69. BellSouth indicates that it will allocate the "buildings cost pool in the same proportion as the related investment in Account 2121, Buildings. This allocation does not appear to be be a reasonable allocator because improvements made to leasehold property may have little to do with the relative use of buildings owned by BellSouth. We require BellSouth to allocate this account in a more cost causative manner, such as using the method it has proposed for its "Other" cost pool - analyzing the leasehold improvements to determine the regulated and nonregulated causation.

Account 3100-Accumulated Depreciation

70. BellSouth has identified a cost pool for "Other." The allocation basis for "Other" is "Analysis of underlying transactions." We believe that BellSouth needs to provide an explanation of underlying transactions that will be used and how the underlying transactions are analyzed to allocate between regulated and nonregulated costs. We direct BellSouth to provide such an explanation in its manual. BellSouth must also define what is included in "Other." Finally, we also require BellSouth to confirm that it intends to maintain depreciation reserve records at the USOA account level.

Account 6124-General Purpose Computer Expense

71. BellSouth provides eleven cost pools for this account. The pools are identified as, for example, "central office related" or "cable and wire related." First, because this is a general purpose computer account, BellSouth is required to explain why these network plant-related expenses are included in Account 6124. Second, BellSouth must explain why the cost pool structure for this account is vastly different from the investment account, which proposes only three cost pools that are unrelated to network functions. Third, BellSouth proposes to allocate the "General Costs" pool based on the general allocator. BellSouth is required to justify or change the use of the general allocator to a more cost-causative allocator.

72. In addition, MCI argues that BellSouth's cost pool apportionment of Account 6124, through "machine utilization and other statistics," is deficient because BellSouth has not provided details with respect to its proposed pooling process that are necessary for an informed judgment on the validity of the process.[80] We agree. MCI's concerns are similar to the ones we expressed above.[81] We require BellSouth to provide an explanation regarding the process of deriving its cost pools for this account.

Accounts 6531 and 6532-Power Expense and Network Administration Expense

73. BellSouth proposes to allocate these accounts based on the combined total current relative use of the three central office switching accounts. AT&T argues that Account 6531 benefits all central office facilities and, therefore, should be allocated on all central office equipment Accounts, *i.e.*, Accounts 2211-2232. Further, AT&T argues, network administration expense benefits all central office and outside plant accounts and should be allocated on that basis, *i.e.*, Accounts 2211-2441.[82] BellSouth in its reply agrees with AT&T and amends its manual accordingly.[83] We have no objection to this amendment.

Account 6533-Testing Expense

74. BellSouth proposes to allocate the "Investment Related" cost pool based on current relative use of Account 2421, Aerial Cable.[84] In conjunction with this account, we do not understand why Aerial Cable is the sole allocation basis for this cost pool. BellSouth is required to justify use of the Aerial Cable as an allocator or to amend its manual to a more cost-causative allocation methodology.

Account 6534-Plant Operations Administration Expense

75. BellSouth has proposed to apportion this account into nine cost pools. These pools are primarily maintenance- and construction-related. As an initial matter, it is unclear why the construction related cost pools are necessary. Construction-related expenses should be cleared to Accounts 2003 or 2004, Telecommunications Plant Under Construction- Short Term and Long Term, before allocation is made to regulated/nonregulated activities.[85] Second, we require BellSouth to explain the rationale for its cost pool apportionment. Use of the terms "Indirect Supervision" and "Other than indirect supervision" as a method for distinguishing cost pools is unclear and confusing.[86] Finally, the allocation bases for the various cost pools state that they will follow related-investment or plant-specific expense. BellSouth should simply name the accounts.

Account 6535-Engineering Expense

76. BellSouth has apportioned this account into six cost pools. One of those cost pools is "Engineering General Supervision and Planning - Construction Related". As stated in Account 6534, above, we believe that contruction-related expenses should first be cleared to Accounts 2003 or 2004, Telecommunications Plant Under Construction, short term or or long term. Second, to the extent there is expense left in this pool after clearance, BellSouth proposes to allocate this cost pool based on Telecommunications Plant in Service (Account 2001). We believe that this allocator should exclude Customer Premises Wiring, Account 2321. BellSouth no longer provides customer premises wiring under tariff and the balance in this account is being amortized. Accordingly, BellSouth should not include the remaining value of this account as part of an allocator for a cost pool that is related to construction.

Account 6561-Depreciation Expense

77. BellSouth proposes to apportion this account into six cost pools. The major cost pool is "Depreciation Expense - Telecommunications Plant in Service (Account 2001) except Equal Access/Network Reconfiguration". Although the Commission has not discussed the allocation of the depreciation expense account, it did address the allocation of the depreciation reserve, Account 3100, in the *Joint Cost Order*. [87] There, the Commission required that the depreciation reserve be disaggregated by plant account and allocated separately. We believe carriers should adopt a similar approach with Account 6561. Therefore, each of the major plant accounts must have a separate cost pool for depreciation expense, and the allocation to regulated/nonregulated activities must be based on the related plant account. BellSouth, therefore, is required to amend this account accordingly.

Account 6611-Production Management Expense

78. This account is divided into two cost pools, "Product Management" and "General Marketing Support". The former is identified by "functional analysis" and the latter by "payroll coding and exception time reporting". We are unclear as to how these two cost pools are separately identified. We require BellSouth to explain this process further, particularly in regard to how costs are identified as either "management" or "support".

79. In addition, The Citizens of Florida comment that the "General Support" cost pool should be directly assigned to the appropriate nonregulated activities.[88] BellSouth's manual proposes that the support pool be allocated pursuant to the marketing allocator. The Commission intended the marketing allocator to be used for unattributable marketing costs, and we are not convinced these costs are unattributable. In reaching this conclusion, we note that if payroll coding and exception time reporting are used to identify the costs in the pool, those time reporting functions ought to be used to differentiate between regulated and nonregulated costs. We direct BellSouth to amend its manual accordingly or justify in detail its need to employ the marketing allocator.

Account 6612-Sales Expense

80. BellSouth divides this account into four cost pools:

> "premises," "other," "interexchange carrier sales," and "sales support." The "premises" and "other" pools are allocated based on "time reporting" and "time studies," respectively. We do not understand the distinction between these two pools nor their proposed allocation methods. BellSouth is required to explain the purpose of the cost pools "Premises" and "Other" and to provide detail on allocators. In addressing its use of "time studies", BellSouth must provide sufficient information for us to determine that the results of the studies are valid and reliable.

81. The Citizens of Florida comment that the cost pool for "Sales Support" should be directly assigned to nonregulated instead of being allocated with the marketing allocator.[89] Our response is the same as in Account 6611. BellSouth must justify its use of the marketing allocator and explain why a more cost causative mechanism is not available.

Account 6613-Product Advertising

82. This account is divided into two cost pools, one for advertising costs and one for "advertising generic/combined." The latter pool is allocated using the marketing allocator. The Citizens of Florida again argue that the marketing allocator should not be used.[90] BellSouth must justify its use of the marketing allocator and explain why a more cost causative mechanism is available.

Account 6623-Customer Services

83. BellSouth divides the costs in this account into four pools. The first pool, "Customer Services -Regulated," refers to "annoyance call bureau/street address guide" as one of the costs included. BellSouth must justify the inclusion of the cost of this item in the pool, since the entire pool is directly assigned to regulated.[91]

Account 6712-Planning

84. As proposed, BellSouth provides for one cost pool for this account. However, BellSouth mentions in its comments column that its "residual cost will be allocated using the General Allocator." The manual does not contain a cost pool for residual costs. We therefore direct BellSouth to add a cost pool to its manual for residual costs.

Account 6721-Accounting and Finance

85. BellSouth separates accounting and finance costs into four cost pools. Two of the pools, "Financial Services" and "Accounting Services-General," are allocated pursuant to the general allocator. The Citizens of Florida comment that BellSouth could reduce the size of its residual cost pool in this account by directly assigning some nonregulated costs. We require BellSouth to justify its use of the general allocator or adopt a more cost causative method.[92]

Account 6722-External Relations

86. BellSouth has provided four cost pools, one of which needs further description -- "Antitrust (Nonlegal)." We do not understand this cost pool. We therefore direct BellSouth to provide an explanation in the manual. We also require BellSouth to justify its use of the general allocator and marketing allocator for two of the four cost pools in this account.

Account 6725-Legal

87. BellSouth intends to apportion costs by a functional analysis into two pools. "General Legal Expense" and "Antitrust Litigation Expense," and then to allocate between regulated and nonregulated using "time reporting" for the first pool and an "analysis of underlying transactions for the second pool. Also, under "General Legal Expense," BellSouth proposes to use the general allocator for any residual costs. We believe BellSouth's method is internally inconsistent and relies too much on the general allocator. Therefore, we direct BellSouth to directly assign costs to either regulated or nonregulated operations based on time and expense reporting. Overhead costs, such as law library or support staff, must be allocated based on the relative regulated and nonregulated split that BellSouth obtained through its direct assignment. BellSouth may employ a "shared" pool allocated using the general allocator, provided that this pool contains no overhead expenses.

Account 6726-Procurement

88. This account is divided into four cost pools: "Plant Support - COE," "Plant Support - OSP," "Plant Support -Other," and "Other. In describing the allocation bases for these pools, BellSouth is using two terms that require further explanation. First, BellSouth states that the allocation "follows expenditure in COE" or "follows expenditure in OSP. BellSouth then uses the term "expense" in the two other cost pools in lieu of "expenditure." BellSouth must clarify the allocation bases for this account by adding an explanation to the manual as to what exactly is meant by "expenditure," and whether it is different from "expense."[93] In addition, BellSouth must explain the "Plant Support -Other" pool. If costs related to central office investment and outside plant facilities are already included in other pools, we do not understand what other network plant-related procurement activity should be re-

flected here. BellSouth must provide the required explanation. In addition to addressing these concerns, we direct BellSouth to explain why it does not rely on time reporting by procurement personnel to allocate its procurement expenses. We believe the allocators selected by BellSouth do not hear a sufficient relationship to procurement expenses to ensure that the costs will not be misallocated. BellSouth must therefore justify its proposal.

Account 6790-Provision for Uncollectible Notes Receivable

89. BellSouth presently states that the costs in this account will be allocated based on an "analysis of underlying transactions." BellSouth must specify if its allocation method is actually based on an "analysis" of Account 1200, Notes Receivable, and if not, on what basis the account is allocated.

Account 7220-Operating Federal Income Taxes, Account 7230-Operating State and Local Income Taxes, and Account 7250-Provision for Deferred Income Taxes

90. BellSouth proposes to allocate the current income accounts based on the separable taxable incomes of the regulated and nonregulated operations. Deferred taxes would be allocated on a variety of bases, with most cost pools following the investment in plant.

91. Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are consistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income, since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, BellSouth's proposal to use "separable taxable income" as an allocator is unexplained. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in appropriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposal methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated -- income taxes. We direct BellSouth to amend its manual accordingly.

Account 7240-Operating Other Taxes

92. BellSouth's manual contains five cost pools for this account. The last pool, labelled "Other," is confusing both as to its derivation and as to its proposed allocation method. BellSouth is required to explain the use of the "Other" cost pool. Such explanation must include exactly how this cost pool will be allocated.

Account 7370-Special Charges

93. BellSouth is proposing two cost pools for this account "Abandoned Projects" and "Other". In order to track the amount BellSouth is claiming for contributions, we require BellSouth to include "Contributions as a cost pool in this account. This cost pool may be allocated based on the general allocator.

IV. PROCEDURAL ISSUES

94. In this section we address a number of procedural issues affecting the manuals. These issues are: (a) the submission of revised manuals in compliance with this order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manuals.

95. *Revised manuals.* We have required BellSouth to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed BellSouth to submit additional information concerning its affiliate transactions, list of nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of BellSouth's proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that determination on their compliance with Commission requirements would be based on a full record.[94] Similarly, we believe that our review of BellSouth's amendments will be aided by public comment on the revision. Public comment on the revisions fulfills the *Joint Cost Order's* promise that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.

96. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement the manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our handling of manuals and the availability of updated manuals to the public, BellSouth must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[95] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a verticle line in the right margin of the page.

97. *Interim reporting and record retention.* The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements* docket.[96] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[97] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 1, 1988, covering the period of January 1, 1988 to March 31, 1988. The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin five months after the implementation of this manual, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements, scheduled to become effective on June 1, 1988, are properly designed and implemented. Moreover, although we will have to wait five months to see the first set of results from the companies, any misallocations that may be detected can be corrected at that time.

98. We require that carriers on an interim basis retain all of their accounting records together with any calculations necessary to perform cost allocations, that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

99. *Routine amendments.* In addition to reporting and recordkeeping requirements, the larger issue of the procedures the companies shall be required to follow when updating their cost allocation manuals must be addressed. In determining how frequently updates to cost manuals should be submitted, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. For example, it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities. Other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes. Furthermore, some of the information required is intended for our informational purposes so that we understand the carriers' activities, while other information in the manuals must be reviewed prior to implementation.

100. Based on an analysis of these factors, we have decided to adopt the following requirements for the update of manuals.[98] First, several categories of information require our attention before the manual is implemented. These are: (1) changes to the cost categories and their allocation mechanisms; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Common Carrier Bureau, pursuant to its delegated authority, stays the effectiveness of the change or rejects the change.[99]

101. Second, we will require that BellSouth file any changes to its corporate structure in a timely manner.[100] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

102. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements set forth in the *Joint Cost Order*. At the same time, it also minimizes the number of times BellSouth must seek prior Commission approval before implementing a change and provides a system which requires Commission action within a relatively short time frame.

V. ORDERING CLAUSES

103. ACCORDINGLY, IT IS ORDERED that the Cost Allocation Manual filed by BellSouth, File Number AAD 7-1677, IS APPROVED, subject to the conditions noted in this Order.

104. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual should be submitted within 60 days from the release date of this Order.

105. IT IS FURTHER ORDERED that this Order shall be effective on **January 1, 1988.**

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] BellSouth's regulated telephone company subsidiaries are South Central Bell Telephone Company (South Central Bell) and Southern Bell Telephone and Telegraph Company (Southern Bell).

[2] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987)(*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987)(Reconsideration Order), *petitions for further recon. pending.*

[3] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[4] Specific Showing Relating to Forecast Period for Commons Investment, filed August 27, 1987.

[5] The commenting parties are: American Telephone and Telegraph Company (AT&T); The Citizens of Florida; International Business Machines Corporation (IBM); MCI Telecommunications Corporation (MCI); and the Western Union Telegraph Company (Western Union).

[6] Pursuant to the *Joint Cost Order*, the Commission originally contemplated approving the permanent, or "Part 32," manuals by Bureau Order only if the permanent manuals differed materially from the interim, or "Part 31," manuals filed by the BOCs. *Joint Cost Order* at 1328. Since Bureau action on the Part 31 manuals remains pending, we will issue orders on each of the BOCs' Part 32 manuals.

[7] *Joint Cost Order* at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[8] *Id.* at 1319.

[9] MCI Comments at 2.

[10] *United States v. Western Electric Company, Inc.*, (D.D.C. Slip Op., September 10, 1987).

[11] MCI Comments at 8-9.

[12] The Citizens of Florida at 2, 6-7. In particular, The Citizens of Florida note that Accounts 2211, 2212, and 2215 for central office switching investment have subcategorization more extensive than the new separations procedures adopted by the Commission.

[13] For a further discussion of the cost pool argument, see III., A., *infra*.

[14] BellSouth Reply at 4, 6.

[15] If the additional material we are requesting does not permit us to determine whether the cost apportionment or cost allocation methods meet Commission requirements, we will order BellSouth to adopt a methodology of our own choosing, pursuant to our delegated authority to implement the manuals.

[16] MTS and WATS Market Structure, Amendments of Part 67 (New Part 36), FCC 87-134, released May 1, 1987.

[17] *Joint Cost Order* at 1334-1337 and *Reconsideration Order* at 6295.

[18] *Joint Cost Order* at 1345, *amended by Reconsideration Order* at 6308-09.

[19] *Joint Cost Order* at 1343, *amended by Reconsideration Order* at 6308.

[20] *Joint Cost Order* at 1328.

[21] BellSouth's use of the phrase "amounts billed" is confusing. The function of the affiliate transactions rules is to produce an amount that can be described as the cost of an asset or service that would be recorded on the carrier's books of account.

[22] BellSouth Manual at 86.

[23] BellSouth Manual at 87.

[24] In the *Ameritech Order*, we examined the arguments for and against treating Bellcore as an affiliate, including the arguments raised in the Bell Atlantic manual proceeding. *Ameritech Permanent Cost Allocation Manual Order*, DA87-1886, adopted December 28, 1987 at paras. 11 - 14. In *Ameritech*, we determined that Bellcore would be treated as an affiliate of all the BOCs. BellSouth must therefore amend its manual to include Bellcore as an affiliate.

[25] *Joint Cost Order* at 1328.

[26] *Joint Cost Order* at 1328.

[27] In doing so, BellSouth must provide sufficient information to permit us to make a judgment that the activity is an *outgrowth* of a regulated activity *and* not a separate line-of-business.

[28] *Joint Cost Order* at 1318.

[29] Western Union Comments at 1-5. Western Union also objects to permitting carriers to allocate the costs of jointly-used central office equipment and outside plant. Western Union argues that by permitting an allocation of cost, rather than requiring a tariffed charge, the Commission is opening the door to discriminatory pricing of carrier facilities. Western Union's objection was dismissed in the *Reconsideration Order*. In that Order, the Commission stated that carriers would be required to charge a tariffed rate for services provided to nonregulated activities whenever a tariffed rate exists. The implementation of *Computer III* will provide tariffed rates for individual service components that are not available on a discrete basis today. Western Union's concerns are therefore better addressed in the *Computer III* implementation prodeeding. *See* Amendment of Sections 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), *Phase I Order, Report and Order*, 104 FCC 2d 958 (1986), *modified on reconsideration* 2 FCC Rcd 3035 (1987), *Third Computer Inquiry, Phase II Order*, 2 FCC Rcd 3072 (1987).

[30] BellSouth Reply at 1, n. 2.

[31] BellSouth Manual at 14.

[32] A greater number of components of telephone service will be available under tariff after the implementation of the *Computer III* Open Network Architecture Plans. The *Computer III* orders require carriers to design "basic service elements" that will allow competing nonregulated enhanced service providers to pick and choose from among the features available on the network.

[33] *Joint Cost Order* at 1319.

[34] BellSouth submitted its proposal prior to the release of the *Reconsideration Order*.

[35] The comments were received after the Commission's adoption of the *Reconsideration Order*, that reduced the forecast period to three years, but before that *Order's* release.

[36] IBM Comments at 1-6.

[37] BellSouth Reply at 2, n. 3.

[38] *Reconsideration Order* at 6285 - 6288.

[39] *Reconsideration Order* at 6288.

[40] *Joint Cost Order* at 1320.

[41] MCI Comments at 7.

[42] BellSouth Reply at 7.

[43] *See Bell Atlantic Permanent Cost Allocation Manual Order*, DA87-1899, adopted December 28, 1987 at para. 45.

[44] MCI Comments at 8.

[45] *But see* BellSouth's "Specific Showing" at 4.

[46] *Joint Cost Order* at 1320.

[47] We anticipate that as part of the *Automated Reporting Requirements* proceeding for the collection of joint cost data, the Commission will consider the true-up process in more detail and as it relates to data collection.

[48] MCI Comments at 3.

[49] AT&T Comments at 2, n. *; and MCI Comments at 4.

[50] The Citizens of Florida at 3-4.

[51] BellSouth Reply at 6-7.

[52] BellSouth Manual at 13.

[53] The *Joint* Cost Ord er provides that maintenance expenses for network plant must be allocated based on a measurement of current use of the plant. Joint Cost Order at 1320.

[54] Joint Cost Order at 1319.

[55] *See supra* at para. 4.

[56] BellSouth Manual at 14.

[57] BellSouth states that directly assignable costs will be recorded pursuant to its "Financial Accounting System," while residual costs will be allocated via its "Cost Accounting System." BellSouth Manual at 7-8.

[58] The Citizens of Florida Comments at 4-5 (citing Accounts 6711, Executive; 6721, Accounting and Finance; and 6722, External Relations).

[59] BellSouth Reply at 5.

[60] These amendments should prove responsive to The Citizens of Florida's second argument, that some costs ought to be directly assigned to nonregulated activities.

[61] BellSouth Manual at 8.

[62] The Citizens of Florida at 8. BellSouth does not specifically respond to this argument. But *see* BellSouth Reply at 5 (arguing that its manual maximizes the use of cost causational allocators).

[63] The Citizens of Florida at 8-9. The Citizens of Florida cite several specific expense accounts that employ the general allocator, and suggest alternative allocation mechanisms. We will resolve each of the comments in the specific account section, infra.

[64] BellSouth Reply at 6.

[65] *See* Section III. E, infra. We also caution BellSouth to limit its use of the marketing allocator to a small precentage of its marketing costs. As in the case of the general allocator, the marketing allocator ratio is only meaningful if it represents a majority of total marketing expenses. Cf. Joint Cost Order at 1318. If we find that the marketing allocator is used to allocate a large percentage of marketing expenses, we will require carriers to amend their cost allocation procedures to maximize direct assignment and attribution.

[66] We also note that in some cases BellSouth proposes to use "functional analysis" to make a cost pool apportionment or cost allocation, and in other cases it proposes a "detailed functional analysis." We are uncertain if the language employed indicates that there are two types of functional analyses and if they differ.

[67] Joint Cost Order at 1328.

[68] Automated Reporting Requirements, 2 FCC Rcd 5770 (1987) at Appendix C.

[69] These accounts will be included in future releases of Automated Reporting Systems reporting formats.

[70] *See* AT&T Comments at 2, n. *, and Bell Atlantic Reply at 3.

[71] If BellSouth does not have any investment, expense, or revenue in an account that is required to be listed, it should list the account and indicate that the account is presently not in use.

[72] MCI Comments at 4.

[73] Citizens of Florida Comments at 6-7.

[74] MCI Comments at 5-6.

[75] BellSouth Reply at 6-7.

[76] These same issues of hypothetical allocations are also presented in Account 2231, Radio Systems and Account 2232, Circuit Equipment. BellSouth must amend its treatment of these accounts, as well.

[77] In addition, the "Other" cost pool in this account reflects the same problems with hypothetical allocations as is presented by the other central office accounts, and must be amended. *See* The Citizens of Florida Comments at 6 and BellSouth Reply at 5-6.

[78] AT&T Comments at 2-3. *See* BellSouth Reply at 3-4.

[79] BellSouth must state in its manual that it has no investment in Account 2425 - Deep Sea Cable, and no expense in the related expense account.

[80] MCI Comments at 5.

[81] *See* Section III., A.

[82] AT&T Comments at 3-4.

[83] BellSouth Reply Comments at 3.

[84] We have previously required clarification of the phrase "investment related.

[85] These expenses would be allocated using the methodology developed for Accounts 2003 and 2004.

[86] We have already directed BellSouth to explain its "functional analysis method of deriving cost pools. For this account, BellSouth states that "functional analysis may include time reporting of labor forces." In providing us with a further explaination of functional analysis, BellSouth must provide specific information about the nature of the analysis. If a particular component of the analysis is contingent in nature, BellSouth should specify the contingency.

[87] Joint Cost Order at 1326.

[88] The Citizens of Florida Comments at 9.

[89] The Citizens of Florida Comments at 9.

[90] *Id.*

[91] In addition, The Citizens of Florida argue that the marketing allocator should not be used to allocate the cost pool for "Customer Instruction Services." For the same reasons we have cited in Accounts 6611-6613, we require BellSouth to justify its use of the marketing allocator.

[92] Similarly, we require justification in response to the identical arguments that the Citizens of Florida have raised concerning Accounts 6722, 6724, 6728, and 7370.

[93] As we understand it, "expenditure" can have different meanings, such as an "expense" or a "cash disbursement.

[94] Revised manuals shall be served on all parties to the BellSouth manual proceeding.

[95] One copy will be made available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[96] Joint Cost Order at para. 1328-29.

[97] Automated Reporting Requirements, *supra* at para. 46.

[98] We shall establish identical updating criteria for each of the BOCs. This action is consistent with the authority delegated by the Commission in the Joint Cost Order.

[99] A stay of the effectiveness of a proposed change to the manual shall not be for longer than 180 days.

[100] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH CO. — AAD 7-1600

Cost Allocation Manual for the Accounting Separation of the Regulated and Nonregulated Costs of AT&T Communications

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 1987; Released: January 13, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. American Telephone and Telegraph Co. (AT&T) filed a "Petition for Waiver and Interim Authority" (the Petition) on November 30, 1987. In the Petition, AT&T requests that we waive the *Part 31 Cost Manual Order* [1] requirement that it continue using certain cost allocation procedures after January 1, 1988. It asks that we instead permit it to implement on that date, on an interim basis, its "Part 32" cost allocation manual. No comments were filed on the Petition.[2] For the reasons described herein, we conditionally grant AT&T's Petition and allow it to implement its Part 32 manual on January 1, 1988.

II. BACKGROUND

2. In the *Joint Cost Order*, [3] the Commission prescribed procedures that AT&T and certain other carriers must use for allocating costs between their regulated and nonregulated activities. The Commission also adopted rules governing the pricing of transactions between the regulated entities and affiliated companies. AT&T was ordered to file a manual, for use during 1987, containing cost allocation procedures consistent with the *Joint Cost Order*. AT&T filed that manual, which was based on the the Uniform System of Accounts (USOA) contained in Part 31 of the Commission's Rules, on April 7, 1987.

3. The Chief, Common Carrier Bureau, rejected AT&T's April 7 cost allocation manual in the *Part 31 Cost Manual Order*. The Bureau concluded that the Part 31 manual lacked necessary detail, contained ambiguity in its descriptions of allocation procedures and provided insufficient information concerning cost categorization. Because the Part 31 manual was prepared for use only in 1987,[4] the Bureau did not require AT&T to amend it to cure the deficiencies. Rather, AT&T was directed to continue using the interim cost allocation procedures which had been approved for its provision of certain combined activities,[5] " . . . until the American Telephone and Telegraph Company shall have obtained approval of a permanent cost allocation manual."[6] The Bureau also provided direction to assist AT&T in preparing a permanent cost allocation manual for use on and after January 1, 1988. AT&T filed the Part 32 manual on November 12, 1987, and parties filed comments on December 17, 1987.[7]

III. AT&T'S PETITION

4. AT&T observes in its Petition that the Commission will probably not act on its Part 32 Manual before January 1, 1988. It states that compliance with the *Part 31 Cost Manual Order* requirement that it use the CAAP procedures after January 1, 1988 would be " . . . extremely burdensome and would create the potential for cost misallocations."[8] AT&T asserts that the CAAP is based on outdated accounting rules and on allocation procedures that do not comply with the *Joint Cost Order*. AT&T states that it would be required to devote substantial resources to design a method by which the CAAP procedures could be followed when the Part 32 USOA is implemented on January 1, 1988, and that it would then have to dismantle those procedures when a permanent manual is approved. Also, according to AT&T, its efforts to conform the CAAP allocation procedures to the Part 32 USOA would involve the use of manual accounting entries, thus increasing the chance of errors. AT&T also states that it will keep sufficient records of the assignments made under the Part 32 manual, and will make any required "true-ups" if it is required to modify that manual. Finally, AT&T states that it requests only interim authority to implement the manual. It does not seek to expand its combined activities beyond those previously approved.

IV. DISCUSSION

5. We grant AT&T's petition, and allow it to implement its Part 32 cost allocation manual on an interim basis effective January 1, 1988. We will not release an order resolving issues concerning AT&T's compliance with the requirements of the *Joint Cost Order* before the new accounting and cost allocation rules become effective. We agree with AT&T that it would not be an efficient use of our resources, or those of AT&T, to try to conform the limited CAAP procedures to the Part 32 USOA for the short period before an order on its Part 32 manual is released.

6. Moreover, consistent with our requirements for the cost manuals of the Bell Operating Companies, we will require modifications to the approved manual to be made effective as of January 1, 1988.[9] Thus, if AT&T makes cost allocations pursuant to the Part 32 manual that are inconsistent with the procedures in the approved manual, it will be able to correct the results during 1988. No harm will result from granting AT&T a waiver of the requirement that it continue to use the CAAP procedures. Our grant of the Petition is not an endorsement of its Part 32 manual and does not authorize AT&T Communications to conduct any additional nonregulated activities. Rather, this action simply provides a more efficient transition to the new accounting and allocation procedures.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that AT&T's Petition IS GRANTED, subject to the conditions described herein.

8. IT IS FURTHER ORDERED, that this *Memorandum Opinion and Order* IS EFFECTIVE UPON ADOPTION.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Cost Allocation Manual for the Accounting Separation of the Regulated and Nonregulated Costs of AT&T Communications, 2 FCC Rcd 6020 (1987) (*Part 31 Cost Manual Order*).

[2] Comments were due to be filed by December 15, 1987. *See Public Notice*, DA 87-1746 (released December 2, 1987).

[3] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *recon.* 2 FCC Rcd 6283 (1987).

[4] The accounting rules contained in Part 31 of the rules have been replaced by the Part 32 rules, effective January 1, 1988. *See* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42 and 43 of the FCC's Rules), FCC 86-221 (released May 15, 1986), 51 Fed. Reg. 43498 (December 2, 1986), *recon.* 2 FCC Rcd 1086 (1987).

[5] These procedures were described in AT&T's October 9, 1985 Combined Activities Accounting Plan (CAAP).

[6] *Part* 31 Cost Manual Order, 2 FCC Rcd at 6022.

[7] *See* Public Notice, 2 FCC Rcd 7176 (1987).

[8] Petition at 4.

[9] *See* Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, DA 87-1886 (adopted December 28, 1987) at para. 94.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS,
Complainant,

v. File No. E-87-138

SOUTHWESTERN BELL
TELEPHONE COMPANY,
Defendant.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

ORDER

Adopted December 31, 1987; Released: January 13, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On June 30, 1987, AT&T Communications (AT&T) filed a formal complaint against Southwestern Bell Telephone Company (Southwestern Bell) alleging that (a) Southwestern Bell's billing and collection rates for the period July 1, 1985, to December 31, 1986, were unjust, unreasonable and unlawful in violation of Sections 201, 202 and 205 of the Communications Act, 47 U.S.C. §§ 201, 202 and 205, and Commission precedent, and (b) Southwestern Bell's earnings for the period October 1, 1985, to December 31, 1986, for billing and collection services provided to AT&T exceeded the authorized rate of return established in the Commission's September 30, 1985 Order in Phase I, CC Docket No. 84-800.

2. The parties have been conducting discussions, including consultation with members of the Enforcement Division, aimed at settling the complaint. A mutually agreeable settlement of all pending controversies between the parties was reached. On December 22, 1987, counsel for AT&T and Southwestern Bell filed a joint motion to dismiss the complaint with prejudice and to terminate the proceedings. We have reviewed the subject agreement and conclude that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the proposed settlement agreement of the parties IS AUTHORIZED.

4. IT IS FURTHER ORDERED that the joint motion to dismiss the above-referenced complaint IS GRANTED with prejudice.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 13, 1988

SOUTHERN NEW ENGLAND TELEPHONE CO. FILES THIRD QUARTERLY EQUAL ACCESS CONVERSION REPORT

Pursuant to the Commission's April 22, 1987 Order regarding implementation of equal access by the Southern New England Telephone Co. (SNET) (FCC 87-128), SNET filed its third quarterly report on December 31, 1987. SNET filed its first quarterly report on June 30, 1987 (*see* PN, DA87-884, released July 15, 1987), and its second quarterly report on September 30, 1987 (see PN, DA87-1473, released October 19, 1987). The third report summarizes the progress SNET has made to date in converting its stored-program-controlled (SPC) access lines to equal access. In its April 22, 1987 Order, the Commission had ordered SNET to comply with its proposed expedited conversion schedule. That schedule provided for the conversion of 23% of SNET's SPC lines by April 27, 1987; 49% by October 27, 1987; 83% by December 31, 1987; and 100% by March 31, 1988. According to its December 31, 1987 report, SNET has thus far exceeded that schedule. To date, it has converted 1,149,400 lines, or 88.3% of the total lines originally scheduled for conversion. In addition, the report indicates that SNET expects to complete the conversion of its remaining SPC lines on schedule.

The SNET third quarterly report is available for reference in Room 537, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C., 20554.

For further information, contact Judith Wish, (202) 632-4047, or Arthur David, (202) 632-0745, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-557

In re Applications of

A.J.T. BROADCASTING SERVICES LIMITED PARTNERSHIP (hereafter AJT)	File No. BPH-850712QK
BLUE MOUNTAIN BROADCASTING COMPANY (hereafter Blue Mountain)	File No. BPH-850712QL
CAROL M. HODGINS (hereafter Hodgins)	File No. BPH-850712RJ
NON-PROFIT CONCEPTS INC. (hereafter Non-Profit)	File No. BPH-850712QH (DISMISSED)

For a Construction Permit
For a New FM Station on
Channel 261A in La Grande, Oregon

ERRATUM

Released: January 13, 1988

The Hearing Designation Order in the above captioned proceeding (DA 87-1798), released December 29, 1987, is corrected to include the footnote that was inadvertently omitted.

[1] On August 14, 1987, the Commission by certified letter notified applicant Non-Profit that Commission records indicated that Non-Profit, in several recent instances, had failed to prosecute other applications and thereby caused the Commission to dismiss those applications. Accordingly, in that letter, the Commission requested that Non-Profit respond within 30 days to inform the Commission of its intent to prosecute. On September 1, 1987, the certified letter was returned. The envelope containing the letter had been stamped by the Postal Service without leaving a forwarding address. No response was received from Non-Profit within the stated 30-day period nor at any subsequent time. Accordingly, Non-Profit's application will be dismissed for failure to prosecute pursuant to 47 C.F.R. § 73.3586(b).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-571

In re Applications of

STEVE P. NEVILLE AND JUDY CRABTREE (hereafter: Neville)	File No. BPH-861118MA
BERNICE FAYE GREENE (hereafter: Greene)	File No. BPH-861124MJ
HOMETOWN BROADCASTING OF CAVE CITY, INC. (hereafter: Hometown)	File No. BPH-861125MF
CAVE COUNTRY COMMUNICATIONS, INC. (hereafter: Cave Country)	File No. BPH-861126MD
STEVEN W. NEWBERRY (hereafter: Newberry)	File No. BPH-861126MQ
John F. X. Browne *et al.* d/b/a BRONNCO BROADCASTING (hereafter: Bronnco)	File No. BPH-861126NC

For Construction Permit
for a New FM Station
on Channel 294A
in Cave City, Kentucky

HEARING DESIGNATION ORDER

Adopted: December 14, 1987; Released: January 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

PRELIMINARY MATTERS

2. A preliminary examination of these applications revealed that the entire allocation for Channel 294A at Cave City, Kentucky is short-spaced to the proposed Co-channel allocation of Channel 294 at Smiths Grove, Kentucky. This short spacing is the subject of the Commission's pending Rule-Making proceeding No. 5742, which proposes to upgrade the allocation at Smiths Grove from a Class A to a Class C2 facility, while changing the alloted Channel for the instant Cave City allocation from Channel 294 to Channel 279. Nonetheless, the applicants for the Cave City allocation will be allowed to proceed to comparative hearing. However, it shall be ordered that any construction permit awarded as a result of this proceeding shall be made contingent on the outcome of Commission Rule-Making No. 5742.

INDIVIDUAL APPLICANTS

3. *Hometown.* Section V-B, Item 15 of FCC Form 301 requires each applicant to supply a tabulation of terrain data calculated in accordance with the procedure prescribed in 47 C.F.R § 73.313. Specifically, this item asks the applicant to compute the height of its proposed antenna's radiation center above average elevation radials at various increments from 0' to 315'. Hometown erroneously calculated these values on the basis of the height of average terrain above mean sea level. This led Hometown to further miscalculate the predicted distances to its 3.16 mV/m and 1 mV/m contours. For example, Hometown indicates that the predicted distance of its 3.16 mV/m contour along the 45 degree radial is 16.1 kilometers, whereas the distance obtained by using the chart found in Figure 1, Section 73.333 of the Commission's Rules is 12.9 kilometers. Similar discrepancies exist with respect to all other listed radials. Similarly, Hometown's Sectional Aeronautical Chart (Figure 1.0) submitted in response to Section V-B, Item 10 misrepresents the actual proposed contours, and the area and population contained within the 1 mV/m contour. These errors have no effect on the acceptability of the application because, despite these discrepancies, the city of license clearly falls within Hometown's proposed 3.16 mV/m contour. Nonetheless, Hometown will be required to file an amendment to Section V-B Items 10 and 15 with the corrected engineering data, within 30 days of the release of this Order, with the presiding Administrative Law Judge.

OTHER MATTERS

3. *EEO.* Where applicants for a new broadcast station propose to employ five or more full-time employees, 47 C.F.R. § 73.2080 requires those applicants to submit equal employment opportunity (EEO) Programs with their applications. Section VI of FCC Form 301 specifies the use of a five-point format set out in FCC Form 396A. In their applications, Greene, Hometown, and Cave Country state that they will employ five or more full-time employees. However, while each has submitted an EEO program, Greene and Cave Country failed to include, within Part IV, adequate examples of minority and women's organizations, employment services, and publications which will be used to effectuate the EEO programs. Hometown failed to include within Part IV, adequate examples only of publications which will be used to effectuate its program. Accordingly, these applicants will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

4. The applicant below has petitioned for leave to amend its application on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted

for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS
Hometown	July 23, 1987; October 23, 1987

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That any construction permit awarded as a result of this proceeding shall be made contingent on the outcome of Commission Rule-Making No. 5742.

9. IT IS FURTHER ORDERED, That applicant Hometown will be required to file an amendment with the presiding Administrative Law Judge within 30 days of the release of this Order correcting the data provided in response to Section V-B, Items 10 and 15 of FCC Form 301.

10. IT IS FURTHER ORDERED, That Greene, Hometown, and Cave Country shall file amended EEO programs with the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, that the petitions for leave to amend filed by the following applicant ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Hometown

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than February 3, 1988, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-572

In re Applications of

Brian Dodge d/b/a HARVEST BROADCASTING (hereafter Harvest) — File No. BPH-870327KG

PUFFER BROADCASTING, INC. (hereafter Puffer) — File No. BPH-870331PC

For Construction Permit for
New FM Station, Channel 267A, 101.3 MHz
Haverhill, New Hampshire

HEARING DESIGNATION ORDER

Adopted: December 14, 1987 Released: January 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

6. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 3, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

7. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-596

In the Matter of

Amendment of Section 73.202(b), RM-5975
Table of Allotments,
FM Broadcast Stations.
(El Dorado, Kansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 14, 1988

By the Chief, Allocations Branch:

1. Pursuant to the request of KIKZ, Inc. (petitioner), licensee of Station KSPG-FM, Channel 257A, El Dorado, Kansas, the Commission has before it for consideration a petition for rule making seeking the substitution of Channel 256C2 for Channel 257A at El Dorado, Kansas and modification of the station license to specify operation on the higher class channel. Petitioner submitted information in support of the proposal. The modification can be made consistent with the Commission's minimum separation requirements at petitioner's present site.

2. We believe the proposal warrants consideration based on petitioner's expressed desire to provide El Dorado with its first wide area FM service. As requested, we shall propose to modify the license of Station KSPG-FM from Channel 257A to specify operation on the higher class adjacent channel, Channel 256C2. In accordance with Section 1.420(g) of the Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel.

3. Accordingly, in order to provide El Dorado with its first wide coverage area FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
El Dorado, Kansas	257A	256C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 4, 1988,** and reply comments on or before **April 4, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Eugene T. Smith, Esq.
715 G Street, S.E.
Washington, D.C. 20003
(Counsel to Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-573

In re Applications of

SUE A. UNDERWOOD AND BRENDA STROUD, A General Partnership (hereafter Underwood)	File No. BPH-860203NK
KUHL PARTNERSHIP (hereafter Kuhl)	File No. BPH-860203NL
LOWCOUNTRY WOMEN COMMUNICATIONS, INC. (hereafter Lowcountry)	File No. BPH-860203NW
INNOVATIVE BROADCASTING, INC. (hereafter Innovative)	File No. BPH-860203NY
OPPORTUNITY BROADCASTING, INC. (hereafter Opportunity)	File No. BPH-860203OA
RADIO CHARLESTON PARTNERS (hereafter Partners)	File No. BPH-860203OB
JOHN A. FITZ (hereafter Fitz)	File No. BPH-860203OC
FM CHARLESTON LIMITED PARTNERSHIP (hereafter FMC)	File No. BPH-860203OD
MEREDITH M. STEEL (hereafter Steel)	File No. BPH-860203OE
CHARLESTON ASSOCIATES (hereafter CA)	File No. BPH-860203OF
CHARLESTON FM GROUP LIMITED PARTNERSHIP (hereafter Group)	File No. BPH-860203OI
SHORE COMMUNICATIONS (hereafter Shore)	File No. BPH-860203OJ
SECOND EQUIMEDIA LIMITED PARTNERSHIP (hereafter Second)	File No. BPH-860203OK
ALLAN A. JENKINS (hereafter Jenkins)	File No. BPH-860203OL
CHARLESTON RADIO ASSOCIATES (hereafter CRA)	File No. BPH-860203OM
GEMINI File No. BPH-860203ON BROADCASTERS, INC. (hereafter Gemini)	
MINORITY BROADCASTING CORPORATION (hereafter Minority)	File No. BPH-860203OO
CLEAR CHANNEL COMMUNICATIONS, INC. (hereafter Clear)	File No. BPH-860203OP
80-90 LIMITED (hereafter Limited)	File No. BPH-860131MJ (DISMISSED)
TERESA H. VAUSE (hereafter Vause)	File No. BPH-860203NX (DISMISSED)
William Saunders and Juanita W. Laroche d/b/a LA-SAUN COMMUNICATIONS (herafter La-Saun)	File No. BPH-860203NZ (DISMISSED)
DOT BROADCASTING, LIMITED PARTNERSHIP (hereafter Dot)	File No. BPH-860203OH (DISMISSED)

For Construction Permit for a New FM station on Channel 264A (100.7 MHz) in Charleston, South Carolina

HEARING DESIGNATION ORDER

Adopted: December 14, 1987; Released: January 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Preliminary matters.* On January 31, 1986, Limited (formerly Capitol Cities Broadcasting Company) submitted an application, and on February 3, 1986, La-Saun and Dot submitted applications to serve Charleston, South Carolina on Channel 264A. Limited's and Dot's applications were returned by staff letters (reference 8920-HC) on February 9, 1986, and La-Saun's application was returned by staff letter (reference 8920-HC) on February 10, 1986, for their short-spacing to station WGIG-FM, Brunswick, Georgia, in violation of 47 C.F.R. § 73.207(a). La-Saun filed a petition for reconsideration of this action on March 12, 1987. Limited and Dot filed a consolidated petition for reconsideration on March 16, 1987, and a supplement thereto on March 17, 1987.

3. La-Saun's application was returned because it was short-spaced by 9.3 kilometers to WGIG-FM's buffer zone, and its accompanying waiver request was concurrently denied as insufficient. In its petition, La-Saun argued that its waiver request showing was sufficient as filed, that WGIG-FM was not protected by a buffer zone, and that *nunc pro tunc* reinstatement of its application would serve the public interest. The applications of Limited and Dot were returned for their 1.3 kilometer short-spacing to the buffer zone of WGIG-FM. Neither Limited nor Dot had requested waiver of the Commission's rules in their applications as originally filed. In their consolidated petition, they stated that their proposals were not short-spaced to WGIG-FM because the additional buffer zone spacing requirement did not apply and thus argued that their applications should be reinstated *nunc pro tunc*. Alternatively, the petition requested waiver of the Commission's rules to the extent it would have been necessary for the originally filed applications to be deemed acceptable for filing.

4. Title 47 C.F.R. § 73.207(a) requires a minimum distance separation of 222 kilometers between Class A and co-channel Class C facilities. The Commission modified its minimum distance separation requirements in *Report and Order* in BC Docket 80-90, 48 Fed. Reg. 29,486 (June 27, 1983), *recon. granted in part*, 49 Fed. Reg. 10,260 (March 20, 1984). Effective April 19, 1984, the *Report and Order* implemented a modification of the Commission's rules in order to increase the availability of commercial FM broadcast allotments. The plan included a three-year transitional period wherein Class C stations would be required to upgrade their facilities, if necessary, to establish a minimum antenna height above average terrain (HAAT) of 300 meters. Stations whose antennas were below this minimum were given increased protection during the three-year period by the institution of a 16 kilometer buffer zone, in addition to the normal distance separation requirements, in order to provide a "protected area" within which the new sites could be selected. These spacing requirements were clarified and emphasized in *Spacing Requirements in Effect until March 1, 1987, Pursuant to BC Docket 80 - 90*, published in *Public Notice*, Mimeo No. 3775, released April 9, 1985, and in 51 Fed. Reg. 26,010 (July 18, 1986). Station WGIG-FM was one such substandard Class C facility receiving buffer zone protection during this period. Thus, a 238 kilometer minimum distance separation was required between the instant proposals and WGIG-FM, whereas La-Saun's application proposed only a 228.7 kilometer separation and Limited's and Dot's applications proposed only a 236.7 kilometer separation.

5. The petitioners argued that the additional buffer zone spacing requirements did not disqualify their proposals because WGIG-FM's filing of a modification application (File No. BPH-860924IG) specifying substandard facilities had resulted in automatic reclassification of its facilities to Class C1 thereby resulting in the forfeiture of its buffer zone protection. Alternatively, they argued that the expiration of the buffer zone protection period on March 2, 1987, had effectively brought the proposals into compliance with the spacing rules.[2] However, buffer zone protection is accorded to affected stations throughout the pendancy of a construction permit application and until the filing of a license application for the facility upgrade. *See e. g., George Henry Clay*, MM Docket No. 87-567, FCC Rcd . (1987) (Hearing Designation Order). No license application had yet been filed by WGIG-FM. Thus, WGIG-FM's intervening filings and other actions before March 2, 1987, were irrelevant to its classification and had no effect on its buffer zone protection.[3]

6. In its *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19,936 (May 13, 1985), the Commission adopted new "hard look" procedures for the processing of FM broadcast applications. However, the *Report and Order* made no substantive change in existing policy governing the acceptability of applications as defined in 47 C.F.R. § 73.3566(a) which states, in pertinent part, that applications "patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will not be accepted for filing." As filed, Limited and Dot's applications failed to include such waiver requests. Under the "hard look" policy, their petition's *ex post facto* request for waiver cannot now be considered. *See Donovan Burke*, 104 FCC 2d 843, 847 (1986). La-Saun's petition's arguments regarding the insufficiency of its waiver request are without merit because, *inter alia*, La-Saun was unable to make the required threshold showing that properly-spaced sites were unavailable at the time it filed its original application. *See Id.* at 844. Furthermore, the *Report and Order* specifically states that resubmission of an unacceptable application with a curative amendment will not gain it *nunc pro tunc* status. Similarly, the subsequent expiration of the buffer zone on March 2, 1987, cannot be interpreted to cure the petitioners' initial failure to propose sites in compliance with the minimum distance separation requirements of 47 C.F.R. § 73.207(a). Thus, the "hard look" policy precludes reinstatement of the resubmitted applications.[4] Accordingly, Limited's, La-Saun's, and Dot's petitions for reconsideration will be denied and their applications will be dismissed.[5]

7. *Vause.* As originally filed, Vause's application did not include a complete certification of site availability. The certification failed to report the identity of the person contacted for purposes of attaining reasonable assurance of site availability as required by Appendix D, Paragraph 2(d) of the *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. at 19,945. On February 24, 1986, subsequent to the February 3, 1986 closing of the Charleston filing window, Vause submitted an amendment to her application which supplemented the site certification by disclos-

ing the identity of her site contact. However, under the "hard look" doctrine, an applicant must meet *all* tenderability requirements which are set forth in Appendix D, *supra*, by the close of the relevant filing window. Certification of site availability is one such tenderability requirement. An applicant who fails to complete the certification as required therein will have its application returned as not sufficient for tender. *See , e. g., Ann D. Genthner*, 1 FCC Rcd 399 (1986). Furthermore, resubmission of such application with a curative amendment will not be considered for *nunc pro tunc* reacceptance. Thus, Vause's application was not tenderable as filed and her post-window amendment cannot cure the noted defect. Accordingly, Vause's application was inadvertently accepted for tender and filing and will be dismissed.

8. *FMC*. On June 5, 1986; August 13, 1986; February 13, 1987; and August 14, 1987; FMC submitted amendments to its application which failed to include the signature of any party to FMC's application as required by 47 C.F.R. § 73.3513(a). Accordingly, these amendments are unacceptable and will be returned without consideration.

9. FMC specified in its application that it is a limited partnership consisting of a general partner, FM Charleston Corporation, and a limited partner, FM America Corporation. The limited partner is involved with numerous other applications for new FM facilities. However, FMC failed to provide an insulation statement wholly satisfying the requirements of the Commission's *Attribution Reconsideration Order*, 58 RR 2d 604, 618 (1985).[6] In order to ensure its application's compliance with the Commission's multiple ownership rules and cross-interest policy, FMC will be required to file an amendment with the presiding Administrative Law Judge within 30 days of the release of this Order.

10. In a November 9, 1987 amendment, FMC reported that the following issues had been specified in the Grove City, Ohio radio proceeding against the application of FM Grove City Limited Partnership (File No. BPH-851216MS), whose 80% limited partner, FM America Corporation, is the 80% limited partner of FMC's application:

> To determine whether FM Grove City Limited Partnership has sufficient net liquid assets available to construct and operate its proposed station in view of the other broadcast construction and operation financial commitments of its limited partner, FM America Corporation;
>
> To determine, in light of the evidence adduced under the preceding issue, whether FM Grove City Limited Partnership misrepresented facts or lacked candor in certifying its financial abilities to construct and operate the proposed station; and
>
> To determine, in light of the determination of the preceding issues, whether FM Grove City Limited Partnership possesses the requisite financial and basic qualifications to be a Commission licensee.
>
> *Order* in MM Docket 87-178, FCC 87M-2171, released September 11, 1987.

11. Pursuant to its request, the application of FM Grove City Limited Partnership was dismissed by *Order*, FCC 87M-2532, released October 13, 1987, prior to the resolution of the above issues. Since FM America Corporation is also the 80% limited partner in FMC's application, these unresolved questions cast uncertainty upon whether FMC is qualified to be a Commission licensee. Therefore, appropriate issues will be specified below.

12. *Jenkins*. On March 25, 1986, Jenkins submitted an amendment to his application containing an engineering exhibit in support of his original application's request for waiver of the city coverage rule, 47 C.F.R. § 73.315(a). However, Jenkins failed to include a showing of good cause for acceptance of this amendment which was filed subsequent to the amendment as of right period. *See Report and Order*, 50 Fed. Reg. at 19,941. Furthermore, for the reason detailed in paragraph 17 below, such amendment would be unnecessary. Accordingly, pursuant to 47 C.F.R. § 73.3522, the amendment will be returned without consideration.

13. *Jenkins, CA, and Minority*. Jenkins, CA, and Minority each indicated that they will co-locate their respective antennas on the existing tower of WCBD-TV, Charleston, South Carolina. According to the Commission's data base, the accepted coordinates for this tower are N Latitude 32' 47' 56" and W Longitude 79' 53' 51" and the proper tower heights are 845 feet above ground level (AGL) and 849 feet above mean sea level (AMSL). However, CA listed the coordinates of the tower as N Latitude 32' 47' *53* " and W Longitude 79' 53' *50* " and Minority listed the coordinates as N Latitude 32' 47' 56" and W Longitude 79' 53' *15* ". Jenkins indicated in his Section V-G and tower sketch that the tower height for this existing structure was 844 feet AGL. CA also indicated that the height of the tower structure AGL was 122.9 meters (403 feet) rather than the 845 feet licensed to WCBD-TV. Minority listed the height of the tower *with* obstruction lighting in its Section V-G and tower sketch as being 842 feet which, according to Commission records, is actually the height of the structure *without* obstruction lighting. Because these applicants clearly propose to locate on an existing tower of a Commission licensee, and because specific reference is made to this tower in various places in the applications in question, the staff could, "drawing on the application[s] as a whole," confidently verify the transmitter location by taking official notice of the site coordinates and tower heights as found in the Commission's files for the licensed co-located facility. Accordingly, Jenkins, CA, and Minority were found to be acceptable for filing; however, they shall be required to file corrective amendments to their applications with the presiding Administrative Law Judge within 30 days of the release of this Order.

14. *CRA*. In response to Section II, Item 6(a) of FCC Form 301, CRA reported in its Exhibit I that its general partner, Douglas R. Allen, is an employee of Millenium Communications, Inc., licensee of WWWZ-FM, Summerville, South Carolina, and that he will terminate his employment should CRA's application be granted. A condition reflecting this commitment will be specified below.

15. *Clear*. On May 15, 1987, Clear filed an application for a new FM station on Channel 298A to serve Columbus, Ohio (File No. BPH-870515NN). The Columbus allotment was randomly selected for financial audit of all applications filed therefor pursuant to the Commission's *Public Notice*, FCC 87-97, 52 Fed. Reg. 17,333 (May 7, 1987). Should any adverse determination be made by the staff concerning Clear's financial qualifications in the Columbus proceeding, appropriate issues would be sought in the Charleston proceeding by the Bureau's Hearing Branch staff. Thus, no determination is yet made on

Clear's financial qualifications to proceed with its instant application pending the outcome of the Columbus financial audit.

16. On March 10, 1987, Clear submitted an amendment to its application requesting a reduction of antenna height. Although this amendment was filed subsequent to the amendment as of right period, no showing of good cause accompanied the amendment. *See Report and Order, supra.* Accordingly, pursuant to 47 C.F.R. § 73.3522, the amendment will be returned without consideration.

17. *Other matters.* On March 16, 1987, Partners filed petitions to deny the applications of the following applicants: Kuhl, Opportunity, Fitz, Steel, CA, Second, CRA, Minority, and Clear. It claimed that these applications should be dismissed for their alleged failure to propose full city coverage pursuant to 47 C.F.R. § 73.315(a). In all cases, however, none of the applicants against which the petitions to deny were filed proposed city coverage of less than 83% of the area within the Charleston city limits.[7] However, the Commission no longer requires waiver of 47 C.F.R. § 73.315(a) when more than 80% of the community of license will be included within the 3.16 mV/m contour and, moreover, figures above 80% are presumed to be adequate. *See John R. Hughes*, 50 Fed. Reg. 5,679 (February 11, 1985). *See also Southwest Communications, Inc.*, released July 16, 1986 (letter from the Chief, FM Branch, reference 8920-HVT). Accordingly, Partner's petitions to deny did not allege matters reflecting on the acceptability of the noted applications and will thus be denied.[8]

18. In response to Section VI, FCC Form 301, the applicants below have indicated that they will each employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rule as set forth in FCC Form 396A, the five-point Model EEO Program. The following applicants have submitted EEO programs that are incomplete or otherwise deficient. Accordingly, the following applicants will be required to file amended EEO programs with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANTS DEFICIENCIES

Underwood Failed to identify specific sources of recruitment specializing in women and minority candidates and printed media which have significant circulation or are of particular interest to minorities or women in which it intends to place employment advertisements.

Innovative Failed to identify: specific sources of recruitment specializing in women and minority candidates; educational institutions with substantial women and minority enrollments from which it intends to recruit employees; and printed media which have significant circulation or are of particular interest to minorities or women in which it intends to place employment advertisements.

Second Failed to identify printed media which have significant circulation or are of particular interest to minorities or women in which it intends to place employment advertisements.

19. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Innovative	May 12, 1986; August 28, 1986; September 25, 1986; October 8, 1986; January 16, 1987; February 20, 1987.
Partners	March 16, 1987; March 27, 1987.
FMC	November 9, 1987.
CRA	July 8, 1987; September 4, 1987.
Gemini	June 5, 1986.
Clear	May 6, 1987; June 9, 1987; July 23, 1987, August 21, 1987; October 6, 1987; November 17, 1987.

20. Since no determination has been received from the FAA as to whether the antennas proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA will be made a party to the proceeding.

APPLICANTS: Opportunity, Gemini, Clear.

21. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

22. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

23. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1 (a). To determine whether FMC has sufficient net liquid assets available to construct and operate its proposed station in view of the other broadcast construction and operation financial commitments of its limited partner, FM America Corporation;

(b). To determine, in light of the evidence adduced under the preceding issue, whether FMC misrepresented facts or lacked candor in certifying its financial abilities to construct and operate the proposed station;

(c). To determine, in light of the determination of the preceding issues, whether FMC possesses the requisite financial and basic qualifications to be a Commission licensee;

2. To determine whether there is a reasonable possibility that the tower heights and locations proposed by the following applicants would constitute a hazard to air navigation: Opportunity, Gemini, Clear.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

24. IT IS FURTHER ORDERED, That the petitions for reconsideration filed by Limited, La-Saun, and Dot ARE DENIED, and their applications ARE DISMISSED.

25. IT IS FURTHER ORDERED, That the application of Vause IS DISMISSED.

26. IT IS FURTHER ORDERED, That the amendments filed by FMC indicated at paragraph 8 hereinabove ARE RETURNED.

27. IT IS FURTHER ORDERED, That FMC shall submit to the presiding Administrative Law Judge an amendment to its application pursuant to paragraph 9 hereinabove, within 30 days of the release of this Order.

28. IT IS FURTHER ORDERED, That Jenkins' March 25, 1986 amendment IS RETURNED.

29. IT IS FURTHER ORDERED, That Jenkins, CA, and Minority shall submit the amendments requested at paragraph 13 hereinabove with appropriate engineering exhibits to the presiding Administrative Law Judge within 30 days of the release of this Order.

30. IT IS FURTHER ORDERED, That in the event of a grant of CRA's application, the construction permit shall be conditioned as follows:

> Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Douglas R. Allen has resigned his position with Millenium Communications, Inc., licensee of WWWZ(FM), Summerville, South Carolina.

31. IT IS FURTHER ORDERED, That Clear's March 10, 1987 amendment IS RETURNED.

32. IT IS FURTHER ORDERED, That the petitions to deny filed by Partners against the applicants listed hereinabove at paragraph 17 ARE DENIED.

33. IT IS FURTHER ORDERED, That in accordance with paragraph 18 hereinabove, the following applicants shall submit to the presiding Administrative Law Judge amendments to their EEO programs within 30 days of the release of this Order: Underwood, Innovative, Second.

34. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 19 hereinabove: Innovative, Partners, FMC, CRA, Gemini, Clear.

35. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

36. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

37. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **February 3, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

38. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The applications of Radio Charleston Limited (File No. BPH-860131MK) and Don H. Barden (File No. BPH-860203OG) were dismissed on November 19, 1987, pursuant to the applicants' requests.

[2] Limited and Dot also argued that the Commission failed to provide proper notice of the additional buffer zone spacing requirements. However, the buffer zone was instituted in the *Reconsideration Order* in BC Docket 80-90, 49 Fed. Reg. 10,260 (March 20, 1984), wherein the Commission stated that it would "provide a 16 kilometer buffer, in addition to the normal distance separation requirements, to existing Class C stations current[ly] operating with an HAAT of less than 300 meters." *Id.* at 10,262. All applicants for commercial FM construction permits are charged with constructive notice of all Commission rules, which are published in the Federal Register. *See* 47 U.S.C. § 1507. *See also Matthew D. Wiggins, Jr.*, 1 FCC Rcd 401, 402 (1986).

[3] Furthermore, WGIG-FM's reclassification of facilities from Class C to Class C1 did not officially occur until March 2, 1987. *See e. g., Public Notice*, FCC 87-93, released March 24, 1987.

[4] Furthermore, the dismissal of the petitioners' applications does not contradict the Commission's goal of maximizingthe pool of applicants to select from, but rather reflects the Commission's present greater emphasis on providing service to the public in the most efficient, expeditious manner possible by avoiding the temporizing with applicants' flawed proposals or procedural failings. *See Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419 (1986); *Chudy Broadcasting Corporation*, 58 RR 2d 133, 134 n.7 (1985).

[5] In order to better utilize the Bureau's limited processing staff resources, the Commission has approved staff consideration and disposition of tenderability and acceptability matters in the con-

text of the relevant hearing designation order rather than in a separate action document. *See Teton Broadcasting*, 1 FCC Rcd 518 (1986). *See also* 47 C.F.R. § 1.106(a)(1).

[6] In order for the limited partners to be exempt from attribution under the Commission's multiple ownership rules, 47 C.F.R. § 73.3555, the applicant must certify that its limited partners will refrain from involvement in any material respect in the management or operation of the proposed station and, further, that no limited partner has any interest or connection of any nature with any broadcast station or other medium of mass communication operating within the service area of the proposed station that is or might be inconsistent with the Commission's cross-interest policy under the *Attribution Reconsideration* Ord er, 58 RR 2d 604, 618 (1985).

[7] Partners' petition to deny filed against Minority's application stated that Minority had proposed only 79% city coverage from its site as indicated in its application. However, Partners noted that the site coordinates contained in Minority's application were erroneous and that from Minority's actual site, 83% city coverage was actually proposed. As noted hereinabove at paragraph 14, the staff recognizes Minority's site coordinates as corrected and thus Partner's 79% city coverage figure will be disregarded as irrelevant.

[8] Furthermore, the city grade waiver requests made by Underwood, FMC, Steel, Shore, Jenkins, and Gemini are hereby dismissed as moot since these applicants proposed substantial compliance with 47 C.F.R. § 73.315(a) as defined above.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-27

In the Matter of

Amendment of Section 73.202(b),	RM-5157
Table of Allotments,	RM-5364
FM Broadcast Stations.	
(Topsail Beach and	
Wilmington, North Carolina)	

SECOND REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 10, 1987; Released: January 14, 1988

By the Chief, Policy and Rules Division:

1. At the request of Woolfson Broadcasting Corporation of Wilmington, Inc. (petitioner or Woolfson), the Commission has before it the *Further Notice of Proposed Rule Making*, 2 FCC Rcd 3193 (1987), proposing the substitution of Channel 266C2 for Channel 265A at Wilmington, North Carolina, and the modification of its license for Station WWQQ-FM to specify the higher powered channel.[1] Comments were filed by the petitioner and by Winfas of Belhaven, Inc. (Winfas), licensee of Station WKJA, Belhaven, North Carolina. Winfas' comments also included a counterproposal to allocate Channel 267C2 instead of Channel 266C2 at Wilmington. Reply comments were filed by petitioner and Winfas. Petitioner also submitted a late-filed "Clarification of Comments."[2]

BACKGROUND

2. As stated in the *Memorandum Opinion and Order*, *supra*, at the time that petitioner originally filed its request for the upgrade at Wilmington, Channel 266C2 could be allocated to Wilmington with a site restriction of 21.6 kilometers south to avoid a short-spacing to the application of Station WPCM-FM at Burlington and to the then pending request of Winfas of Belhaven, Inc. to substitute Channel 266C2 for Channel 221A and the modification of Station WJKA's license at Belhaven, North Carolina. However, prior to petitioner's reconsideration request, Winfas submitted an application for Station WJKA on Channel 266C2 specifying a transmitter site closer to Wilmington than it had in its rule making request. [3] In reviewing petitioner's reconsideration request, we noted the short-spacing to Station WJKA's application but found that Channel 266C2 could still be allocated to Wilmington without conflicting with Station WJKA's application if the Wilmington channel was restricted to a site 31.6 kilometers (19.6 miles) southwest.[4] However, because it appeared that compliance with this restriction would require the transmitter to be sited in an area known as the Green Swamp, the Commission sought further information from Woolfson.

COMMENTS

3. Petitioner states that the 31.6 kilometer site restriction required to protect the transmitter site specified in Station WJKA's application would render Channel 266C2 at Wilmington unusable. It states that in order to provide at least 80% coverage to Wilmington as specified in Section 73.24(j) of the Commission's Rules, it would have an available site area of less than 1 square kilometer.[5] Further, it states that this small area would be located in swamp land more than 2 kilometers from the nearest road. Petitioner asserts that there is no present access to the site area and that construction of a road, if possible, would be prohibitively expensive. It goes on to state that the closest area to Wilmington which would meet the Commission's mileage separation requirements and protect the pending applications of Stations WPCM at Burlington and WJKA at Belhaven would permit Station WWQQ to encompass only 65% of Wilmington within its 3.16 mV/m contour. Thus, it contends that the allocation of Channel 266C2 to Wilmington, with the greater site restriction, would effectively make it impossible for Station WWQQ to upgrade its facilities to Class C2.

4. Petitioner states that it is well established policy that where a pending allotment and pending application are in technical conflict, the Commission considers the applied-for site to be only a preference and absent a compelling showing that use of the site would better serve the public interest, instead favors the allotment since it represents a new service. In support, it cites *Las Vegas, Nevada*, 59 RR 2d 1330, *Andalusia, Alabama*, 49 FR 32201, published August 13, 1984, and *Freeport, Texas*, 44 RR 2d 135 (1980). Here, petitioner submits that neither it nor Winfas proposes a new service. Rather, each seeks to provide improved service to their respective communities of license. Thus, petitioner asserts that the equities underlying the basis of both proposals are essentially equal. However, it states that Winfas' proposed transmitter site still represents merely a preference. In support of its proposal, petitioner states that if Station WWQQ were upgraded to Channel 266C2, it would increase its 1 mV/m coverage area by 146%, from its present 1,535 square kilometers to 3,780 square kilometers. It contends that this increase in service represents a considerable benefit to its listeners and thus the public interest. Woolfson argues that the only reason for the 10 kilometer increase in the required site restriction for Channel 266C2 at Wilmington is Station WJKA's application specifying a site nowhere near the reference coordinates which Winfas had specified in its rule making. According to petitioner's consulting engineer, if Channel 266C2 is allocated to Wilmington as originally proposed, Station WJKA at Belhaven would still retain a 127 square kilometer (49 square mile) area in which to locate its transmitter. Petitioner states that there are a number of communities located within this area, thus clearly demonstrating that the area is not exclusively swamp land or creeks.

5. Winfas opposes the allotment of Channel 266C2 to Wilmington, if it does not protect its applied for site. However, it believes that no comparison of the two communities is necessary since Channel 267C2 can be substituted at Wilmington with a suggested site restriction of 22.7 kilometers (14.1 miles) south. It states that the allotment of Channel 267C2 would eliminate the conflict between it and Woolfson and also provide flexibility to Station WWQQ in selecting a transmitter site. Should a comparison of the communities be necessary, however,

Winfas states that Wilmington has 5 FM channels allocated to it and receives service from stations in Burgaw and Southport, North Carolina, and will receive service from a new channel which has been allotted to nearby Wrightsville Beach, North Carolina. In addition, it notes that there are 4 AM stations assigned to Wilmington or contiguous Leland, North Carolina. In contrast, Winfas states that Station WJKA is the only station operating at Belhaven. Thus, it argues that an expanded first local service at Belhaven is more consistent with the objectives of Section 307(b) of the Communications Act and the priorities enunciated in *Revision of FM Assignment Policies and Procedures*.[6] Therefore, it urges the allotment of Channel 267C2 to Wilmington and the grant of Station WJKA's minor change application.

6. In response, petitioner reiterates its arguments against the allotment of Channel 266C2 at Wilmington with the 31.6 kilometer site restriction. It also opposes the allotment of Channel 267C2, as counterproposed by Winfas. According to its engineering consultant, there is a 67 square kilometer site area located in Brunswick and New Hanover Counties, divided by the Cape Fear River. However, according to Station WWQQ's chief engineer, the area which is not swamp or water west of the river is almost completely encompassed by the Sunny Point Military Ocean Terminal, a U.S. Army transportation port for overseas shipments of munitions and equipment. Petitioner states that the Army rejected an informal request seeking permission to locate a tower on their land. As to the land east of the river, petitioner's chief engineer states that it is predominantly beach area zoned for residential and recreational use. He further notes that the southernmost part of this area includes the Port Fisher Historical Museum and the United States Air Force radar station. Informal overtures to the New Hanover County zoning authorities were also rejected and he is now seeking assistance from local realtors to determine if there is a suitable site in either New Hanover or Brunswick Counties. Therefore, petitioner contends that if a Class C2 allotment is to made to Wilmington, it can only be Channel 266C2 with the lesser site restriction. Asserting that the conflict is between the sites proposed by Winfas in its pending application and the proposal for Station WWQQ to utilize Channel 266C2 at Wilmington with the lesser site restriction, petitioner provides data comparing the area and population to be gained from use of Channel 266C2 by both WJKA and WWQQ at their desired transmitter sites as well as past and future population trends for their respective service areas.

7. In reply, Winfas reasserts its opposition to Channel 266C2 at Wilmington and urges instead the allocation of Channel 267C2. In support, Winfas submits a study from its technical consultant showing that there is a large area south of Wilmington where the tower could be located in compliance with the Commission's minimum distance separation and city grade coverage requirements. It appends maps of New Hanover and Brunswick Counties detailing the available site area. In addition, it states that the maps indicate the existence of two 620 foot towers, thus showing the ability to get FAA approval. Winfas contends that petitioner's unsupported arguments as to the cost and difficulty of locating a tower within the 1 square kilometer area available does not meet the burden which it must meet in order to prevail over the Belhaven application. The fact that construction of the tower may be difficult and expensive is not a sufficient justification, according to Winfas. Further, it questions petitioner's statement that compliance with the Commission's environmental requirements is "doubtful" absent a showing as to what considerations apply and why it could not meet them. Winfas also submits a comparison of the populations and gain areas to be served by each station. As to Woolfson's argument that its proposal for Wilmington should take precedence over grant of Belhaven's application because Station WJKA has available to it a large area in which it could locate its Class C2 transmitter without conflicting with the desire to upgrade Station WWQQ, Winfas states that the Commission had already granted its application to change transmitter site and upgrade its facilities. Winfas argues that its attempt to bring increased service to the Belhaven area has been delayed now that the grant of its minor change application has been rescinded. It contends that a further delay will occur if it is forced to submit a new minor change application specifying a non-conflicting site since it would be required to locate such a site, confirm that it is available for application, prepare new engineering studies and then await Commission processing of this new request. It argues that it would be a waste of time and money to require Station WJKA to file a new application specifying a different site as well as a waste of Commission resources to have to process another application. If Station WWQQ is modified to Channel 267C2, it states that Station WJKA's construction permit could be reinstated and it could immediately begin construction of its improved facilities.

8. In its "Clarification of Comments," Woolfson states that the two towers which WJKA has identified for use by Station WWQQ on Channel 267C2 are unavailable. It states that these are Loran towers which are owned and used by the Coast Guard to pinpoint the location of ships at sea and that it has been informed that no commercial radio antenna could be co-located on these towers.

DISCUSSION

9. The *Further Notice* was issued to explore whether Channel 266C2 could be allocated to Wilmington with a site restriction of 31.6 kilometers south in order to avoid a conflict with the pending co-channel application of Station WJKA at Belhaven. Upon review of the pleadings before us, we believe that the allocation of Channel 266C2 to Wilmington with such a site restriction would render the channel unusable. Petitioner has confirmed that the site proposed in the *Further Notice* is not located on ground that can support a transmitter but in a swamp. As described by petitioner, a transmitter for Channel 266C2 at Wilmington, if required to protect Station WJKA at Belhaven, would have to be located within 1 square kilometer in an isolated portion of the swamp more than 2 kilometers from the nearest road. Winfas does not dispute the description of the available site area, but instead contends that petitioner's arguments concerning the difficulty and expense of placing a transmitter there is an insufficient reason to deny WJKA's pending application. On the contrary, we believe it unfair to require that a station undertake such extreme measures in order to protect the preferred site specified in Station WJKA's application.

10. Likewise, we find that petitioner has also shown that there is good reason to believe that it would be unable to obtain a transmitter site for Channel 267C2 if allocated to Wilmington. Woolfson has submitted affidavits from its Chief Engineer stating that his attempts to locate a suit-

able transmitter site have been unsuccessful. He found that the potential transmitter site area consists, to a large extent, of beach area which is zoned only for residential or recreational use which county zoning authorities have indicated an unwillingness to consider changing. That area which is not so zoned is land which is used by various military installations whose officials have also stated an unwillingness to allow use of their land for a civilian radio transmitter. Winfas has not provided any showing refuting petitioner's inability to locate a Channel 267C2 site.

11. Woolfson, on the other hand, provides a showing that Station WJKA would have an area of 127 square kilometers in which to locate its transmitter if Station WWQQ's request were accommodated. Winfas neither questions Woolfson's showing nor demonstrates that it would have any difficulty in locating such a conforming site. Rather, it merely states that it would be inconvenienced and forced to spend additional monies in order to relocate to a non-conflicting site. Therefore, we believe that the site proposed by Station WJKA at Belhaven can be considered as nothing more than a preference.

12. Based on the information before us, we find that Woolfson has made a convincing showing that use of either Channel 266C2 or Channel 267C2 at Wilmington, at a location which protects the site specified in Station WJKA's pending application, is not feasible. In light of this decision, we do not find it necessary to consider the gain area and population data provided by petitioner and Winfas. However, a staff study comparing the area and population which Station WJKA would serve from the site specified in its application and from a site within the 127 kilometer area identified by Woolfson leads us to believe that Station WJKA can retain virtually the same service area if it relocates its transmitter to a non-conflicting site. Therefore, based on the above discussion, we find that the public interest would be served by permitting both stations to expand their service areas and thus provide an increased service to the residents in the vicinity of both Belhaven and Wilmington. We also find that the Commission's goal of fostering the efficient use of the spectrum will be furthered by allowing both the Belhaven and Wilmington stations to operate as higher powered Class C2 stations. While the allotment of Channel 266C2 to Wilmington requires only a 21.6 kilometer site restriction, we are instead imposing a 28.7 kilometer south site restriction which will accommodate the site specified by Woolfson in its Clarification of Comments and also provide Station WJKA additional area in which to locate a transmitter site.[7]

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **February 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Wilmington, North Carolina	247C, 266C2, 274C1, 287A

14. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Woolfson Broadcasting Corporation of Wilmington, Inc. for Station WWQQ-FM, Wilmington, North Carolina, IS MODIFIED effective **February 26, 1988,** to specify operation on Channel 266C2, in lieu of Channel 265A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

15. IT IS FURTHER ORDERED, That Winfas of Belhaven, Inc. amend its pending application (BPH-861103IG) to comply with the decision reached herein. Once amended, the application will be processed based on its original filing date.

16. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Woolfson Broadcasting Corporation of Wilmington, Inc. requesting the allocation of Channel 266C2 to Wilmington, North Carolina, and the modification of its license for Station WWQQ to specify the higher powered channel, IS GRANTED.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] By *Report and Order*, 51 Fed. Reg. 30363, published August 26, 1986, the Commission allocated Channel 267A to Topsail Beach, North Carolina, as the community's first local FM service, at the request of Jeffrey D. Southmayd (Southmayd). Woolfson's counterproposal requesting the allocation of Channel 280A to Topsail Beach and the substitution of Channel 266C2 for its Class A at Wilmington was denied since Channel 266C2 could not be allocated to Wilmington in view of the dismissal of the application of co-channel Station WPCM-FM, at Burlington, North Carolina, specifying minimum Class C facilities. Southmayd and petitioner filed a joint reconsideration request seeking grant of petitioner's counterproposal based on transmitter site problems with Channel 267A at Topsail Beach and the refiling and grant of Station WPCM-FM's application specifying minimum Class C facilities. By *Memorandum Opinion and Order*, the Commission substituted Channel 280A at Topsail Beach. At the same time, we issued the instant *Further Notice* to explore transmitter site questions surrounding the allocation of Channel 266C2 to Wilmington.

[2] The staff requested the clarification since it was unable to determine the coordinates from the map which Woolfson had submitted with its comments. In addition, we have accepted the remaining portion of its late-filed comments concerning the use of the two tall towers identified by Winfas since the location of the towers was advanced only in reply comments. Thus, Woolfson could not have responded in a timely fashion and its response has provided us with information of decisional significance.

[3] By *Report and Order*, MM Docket 85-339, 51 FR 19348, published May 29, 1986, the Commission allocated Channel 266C2 to Belhaven, and modified the license of Station WJKA to specify the higher powered channel.

[4] Station WJKA's application (BPH-861103IG) was inadvertently granted on June 5, 1987, and rescinded on June 18, 1987.

[5] Section 73.24(j) concerns the showing required by applicants for new or modified AM stations that its 5 mV/m contour covers the *entire* community of license (emphasis supplied). The corresponding rule for FM applicants in Section 73.315(a).

[6] The priorities set forth therein are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters (co-equal weight given to priorities (2) and (3)). 90 FCC 2d 88, 91 (1982).

[7] The coordinates for the Wilmington site are: North Latitude 33o, 59', 29", West Longitude 78o, 01', 26".

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-594

In the Matter of

Amendment of Section 73.202(b), RM-6100
Table of Allotments,
FM Broadcast Stations.
(Huntsville, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987 Released: January 14, 1988

By the Chief, Allocations Branch:

1. Don Werlinger, d/b/a The Broadcast Development Group, Inc. (petitioner), filed a petition for rule making proposing the allotment of Channel 278A to Huntsville, Texas, as that community's second FM service.[1] Petitioner states an intention to apply for the channel, if allotted.

2. The channel can be allotted to Huntsville, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) southwest of the city. The site restriction is necessary in order to avoid a short spacing to Station KJCS(FM), Channel 277C1, Nacogdoches, Texas.

3. We believe the proposal warrants consideration. Accordingly, in order to provide Huntsville with its second FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Huntsville, Texas	269A	269A, 278A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 4, 1988,** and reply comments on or before **April 4, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Don Werlinger
P. O. Box 1223
Lockhart, Texas 78644
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] The Commission is also considering in a separate proceeding a counterproposal to allot Channel 284A to Huntsville, Texas (MM Docket No. 87-209, Public Notice was given September 11, 1987, Report No. 1676).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-595

In the Matter of

Amendment of Section 73.202(b), RM-5857
Table of Allotments,
FM Broadcast Stations.
(Beloit, Kansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 14, 1988

By the Chief, Allocations Branch:

1. Pursuant to the request of Solomon Valley Broadcasting, Inc. (petitioner), licensee of Station KVSV-FM, Channel 288A, Beloit, Kansas, the Commission considers herein a petition for rule making proposing to modify its license from a Class A station operating on Channel 288 to a Class C2 station operating on the same channel. Petitioner has submitted information in support of the proposal.

2. The modification can be made in compliance with the minimum separation requirements of the Commission's rules at petitioner's present site. As requested, we shall propose to modify the license of Station KVSV-FM from a Class A to a Class C2 station operating on Channel 288. In accordance with Section 1.420(g) of the Rules we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel.

3. Accordingly, in order to provide Beloit with its first wide coverage area FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following community:

	Channel No.	
City	Present	Proposed
Beloit, Kansas	288A	288C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 4, 1988,** and reply comments on or before **April 4, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Charles K. Frodsham, President
Solomon Valley Broadcasting, Inc.
Post Office Box 7
Beloit, Kansas 67420
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division

Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-598

In the Matter of

Amendment of Section 73.202(b), RM-5801
Table of Allotments,
FM Broadcast Stations.
(Camden, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 14, 1987; Released: January 14, 1988

By the Chief, Allocations Branch:

1. Pursuant to the request of KJWH, Inc. (petitioner),[1] the Commission considers herein its petition for rule making to allot Channel 283A to Camden, Arkansas, as that community's third local FM service. Petitioner states its intention to apply for the channel, if it is ultimately allotted.

2. A staff engineering study reveals that Channel 283A can be allotted to Camden, Arkansas, consistent with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules.

3. In consideration of the above, and since the proposal could provide a third local FM broadcast service to Camden, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Camden, Arkansas	237A, 246C2	246C2, 263C2,[2] 283A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 4, 1988,** and reply comments on or before **April 4, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Eugene T. Smith, Esq.
Law Offices of Eugene T. Smith
715 G Street, S.E.
Washington, D.C. 20003

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Petitioner is the licensee of Station KJWH-AM, Camden, AR.

[2] A counterproposal (RM-5911) is pending in MM Docket No. 87-40 to substitute Channel 263C2 for Channel 237A at Camden.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-65

In re Applications of

THE BALTIMORE RADIO SHOW, INC.	File No. BPH-860102NT
FIRST STATE BROADCASTING, INC.	File No. BPH-860102NX
KENT COUNTY RADIO LIMITED PARTNERSHIP	File No. BPH-860102NZ
SMYRNA BROADCASTERS LIMITED PARTNERSHIP	File No. BPH-860102OA
CENTRAL DELAWARE BROADCASTING CO.	File No. BPH-8601020B

For Construction Permit for
a New FM Station
Smyrna, Delaware

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 1987; Released: January 14, 1988

By the Review Board:

1. Before us is an Appeal, filed November 5, 1987, by Nationwide Communications Inc. (NCI), licensee of WPOC(FM), Baltimore, Maryland, from a *Memorandum Opinion and Order* (FCC 87M-2708, released October 29, 1987) (MO&O) issued in this proceeding by Administrative Law Judge Joseph Chachkin (ALJ), denying NCI's Motion to Intervene. Two of the above-styled applicants (First State Broadcasting, Inc. (FSBI) and Kent County Radio Limited Partnership (Kent)), as well as the Commission's Mass Media Bureau, have opposed NCI's appeal. Smyrna Broadcasters Limited Partnership (SBLP), via an unauthorized reply to the Bureau's opposition, supports NCI's proposed intervention. [1]

2. The *causae causans* of the instant appeal are: (1) a September 4, 1987 petition filed jointly by four of the above-captioned applicants (FSBI, Kent, Central Delaware Broadcasting Co. and The Baltimore Radio Show Inc.) seeking the ALJ's leave to amend their respective applications to specify a new transmitter site in order to obviate the environmental issue designated in this proceeding; and, (2) a conforming joint petition for waiver of Section 73.207 of the Commission's Rules, 47 CFR §73.207 (FM minimum spacing requirements). A universal environmental issue had been designated in this proceeding, because all applicants proposed to locate their transmitters near the Woodland Beach Wildlife Area and the Bombay Hook National Wildlife Refuge in Delaware. *See Hearing Designation Order*, 2 FCC Rcd 1766 (1987).

3. The waiver of Section 73.207 was necessary because the new transmitter site proposed by the four joint petitioners is "short-spaced" to two first-adjacent channel stations: NCI's Station WPOC(FM), 93.1 MHz Baltimore, Maryland - - 0.99 miles; and Station WGMD(FM), 92.7 MHz Rehoboth, Delaware - - 0.68 miles. As a result of the "short-spacing," both NCI and Resort Broadcasting, Co. ("Resort"), licensee of WGMD(FM), sought intervention in this proceeding "to determine the effect of the short-spacing on their respective operations." *MO&O* at para. 3. NCI also opposed the joint petition to amend and the request for waiver. On October 2, 1987, SBLP, the only other remaining applicant in this proceeding, also filed a petition for leave to amend to specify a new transmitter site some 0.2 miles "short-spaced" to Station WGMD(FM). [2]

4. In denying the two motions to intervene, the ALJ recognized that, generally, a licensee has a right to intervene in a proceeding on a claim of objectionable electrical interference. He held, however, that the general policy was not applicable here because "short-spacing" of less than one mile was *de minimis*, citing *Kenter Broadcasting Co.*, 62 RR2d 1573, 1577 n. 9 (1986), *aff'd Kenter v. F.C.C.*, 816 F.2d 8 (D.C. Cir. 1987), and - in essence - "unobjectionable." The ALJ also faulted NCI and Resort for failing to file any engineering analysis required by Section 1.223 of the Commission's Rules, 47 CFR §1.223, governing petitions to intervene. Finally, the ALJ found that "good cause" had been established for acceptance of the transmitter site amendments, stating that the "public interest would be served by acceptance of the amendment since the harmful environmental consequences envisioned by the Department of Interior and the Delaware Department of Natural Resources and Environmental Control [would be] avoided by moving to the new site." MO&O at para. 5. NCI has appealed that ruling. Resort has not.

5. NCI's appeal challenges the ALJ's ruling that the 0.99-mile short-spacing to its facility is *de minimis*, arguing that *Kenter* does not establish "an exact boundary to determine what short-spacings fall within the [*de minimis*] exception." Appeal at 2. Rather, NCI contends, the current Commission policy is that set forth in *Trend Broadcasting, Inc.*, 18 FCC 2d 749 (1969) and *Nelson County Broadcasting Co., Inc.*, 64 FCC 2d 932 (1977). Under those older cases, the Commission held short-spaced applications in abeyance for a period of 30 days, after notifying the short-spaced applicants that a waiver of the spacing rules would not be granted where at least one applicant for the same channel specified a fully-spaced site. If the notified applicant failed to file curative amendments within those 30 days, the application would be denied further consideration. *See, e.g., Donovan Burke*, 60 RR 2d 110, 112 (1986). NCI argues that, since SBLP has specified an alleged "fully-spaced site" (*i.e.*, as calculated by "rounding-off" to the nearest kilometer pursuant to Section 73.208(c)(5)), the joint petitioner's request for a waiver of the minimum distance separation requirements should be denied. [3] NCI also cites *Donovan Burke* to show that the short-spacing here is not *de minimis*. There, a

waiver for a short-spacing of only 0.6 miles was denied in the context of a comparative hearing. Lastly, NCI asserts that affirmance of the ALJ's instant ruling would establish a "new policy" that all short-spacings in FM proceedings of 1 mile (or less) are *de minimis* and, in effect, lessen the Commission's spacing requirements by that distance. We hold as follows.

6. An existing licensee has a right, under Section 316 of the Communications Act (formerly Section 312(b)) to intervene as a party to a proceeding where it has made a showing that a license grant will create "objectionable interference" to its facility, because any such interference would bring about an "indirect modification" of its licensee. *See FCC v. National Broadcasting Co.*, 319 U.S. 239 (1943); *see also* Section 1.223(a) of the Commission's Rules. Until 1983, Section 316(a) of the Act, read, in pertinent part (emphasis added), that:

> [N]o ... modification shall become final until the holder of the license or permit ... shall have been given reasonable opportunity ... to show cause *by public hearing, if requested,* why such order of modification should not issue ....

Even under that language, however, "the type of hearing required depend[ed] upon the facts of an individual case and the type of question to be resolved. If, for example, the facts [were] stipulated and the sole issue involve[d] a question of law (such as, whether petitioner's claim [fell] within any applicable legal definition of 'objectionable interference'), the Commission [would] rule on the basis of written pleadings and oral argument." *Western Broadcasting Co. v. FCC*, 674 F.2d 44, 55 (D.C. Cir. 1982). Subsequent to the *Western* decision, Congress amended Section 316 to delete even the oral argument alluded to in *Western* and to clarify that parties requesting a hearing on "objectionable interference" would be required to submit specific allegations raising a substantial and material question of fact in order to be entitled to a hearing. H.R. Rep. No. 356, 98th Cong., 1st Sess. 15-16, *reprinted in* [1983] U.S. Code Cong. & Ad. News 2231-2232. [4] "Objectionable interference," in turn, has been defined, in at least one case, as interference above the *de minimis* level. *See Santa Monica Broadcasting, Inc.*, 53 RR 2d 324, 325 (1983). Hence, in a 1986 response to a request by the U.S. Court of Appeals, District of Columbia Circuit for guidelines on the outer limits of the *de minimis* exception, *see North Texas Media, Inc. v. FCC*, 778 F. 2d 28, 32 n. 31, the Commission, in *Kenter Broadcasting Co., supra,* stated that it would not invoke the *de minimis* exception in any case where an applicant proposed to be short-spaced by more than one mile or 1.6 kilometers *and* did not show that the public interest would be served. *Kenter* is plainly recognized as establishing one mile or 1.6 kilometers (actual, not rounded-off distances) as the outer limit of what constitutes FM *de minimis* short-spacing. *See, e.g., Fuller-Jeffrey Broadcasting Corp. of New England,* 2 FCC Rcd 5098 n.2 (1987); *Sunshine Group Broadcasting,* 2 FCC Rcd 4723 n.3 (1987). Thus, Nationwide is incorrect in asserting that *Kenter* failed to establish an exact boundary for *de minimis* short-spacings and that the Board would be establishing a new policy by affirming the ALJ's ruling. Simply stated, and almost by definition, *de minimis* short-spacing is not regarded as creating "objectionable interference," absent an engineering showing that would raise some uncontemplated question of fact. Moreover, in recent cases involving the short-spacing found here, an applicant is excused from the threshold showing that fully-spaced sites are not available, *provided* that sufficient public interest considerations exist to support the requested waiver. *See Sunshine Group Broadcasting, supra,* note 3. The avoidance of any conceivable environmental question here provides a sufficient public interest justification.

7. Nor does the Commission's failure to grant a Section 73.207 waiver in *Donovan Burke,* where the short-spacing proposed was only 0.6 miles, undermine the ALJ's ruling. First, *Burke* was decided prior to *Kenter.* Second, and perhaps more importantly, the justification offered by the *Burke* applicant was merely a private economic reason, and as such was insufficient to justify a public interest waiver. *See Nelson County Broadcasting, Co., Inc., supra,* and *Trend Broadcasting, Inc., supra.* [5] Here, by contrast, the ALJ has found that the joint petitioners seeking a waiver of the minimum separation distance rules have demonstrated that the public interest would be served, despite the *de minimis* deviation from the Commission's spacing rules. In view of the foregoing, Nationwide has presented no substantial and material questions of fact that would justify an evidentiary hearing on this matter, or warrant a grant of its petition for intervention.

8. ACCORDINGLY, IT IS ORDERED, That the appeal filed November 5, 1987 by Nationwide Communications Inc. IS DENIED; and

9. IT IS FURTHER ORDERED, That the motion for leave to file reply, filed November 18, 1987 by Smyrna Broadcasters Limited Partnership IS DENIED and the reply DISMISSED; and that the motion for leave to file statement to clarify the record, filed November 20, 1987 by Nationwide Communications Inc. IS GRANTED, and the statement to clarify the record IS ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] The opposition pleadings correctly point out that NCI's appeal is subject to dismissal because it exceeds the page limitation prescribed by Section 1.301 of the Commission's Rules, 47 CFR §1.301. *See Mary Ann S. Bohi,* 103 FCC 2d 1008, 1009 n. 3 (Rev. Bd. 1986). We note, however, that had NCI's appeal been dismissed, subject to being refiled in compliance with Section 1.301, NCI likely could have recast its pleading and included within the 5-page limitation prescribed by the rule all of the material it now contains. We, therefore, have considered NCI's appeal. On the other hand, SBLP's motion for leave to file reply will be denied pursuant to Section 1.301(c)(7) (replies not permitted unless specifically requested by the Commission). We also note in passing that SBLP's reply contains abusive language. All counsel are reminded that such intemperate language in pleadings impairs "respect for the administrative process and for the official actions of those charged with the responsibility for administering the law." *TeleCable Corp.*, 18 FCC 2d 476, 478 (1969). *See also* Section 1.24(a)(4).

[2] NCI points out in a statement to clarify the record, filed November 20, 1987, that the procedure for calculating the distance between co-ordinates was modified effective November 9, 1987. NCI represents the newly calculated distance between SBLP's proposed site and Station WGMD(FM) as 0.19 kilometers. It is not decisionally significant, however, *in this proceeding*, whichever method of calculation is utilized (the distance cited in the ALJ's *MO&O* or the clarifying statement). Both are *de minimis* distances.

[3] While an artful and novel argument, we disagree with NCI that SBLP has specified a fully-spaced site. It has not. The *actual* separation between SBLP's proposed site and Station WGMD(FM), Rehoboth is less than the minimum distance specified by the Commission's Rules. *See Sunshine Group Broadcasting, supra* at n. 3.

[4] NCI's contention that no engineering analysis need accompany its motion to intervene is mistaken in light of the specific language of Section 316 of the Act and Section 1.223 of the Commission's Rules. We need not, however, decide whether NCI's submission of an engineering study with its "Opposition to Joint Petition for Leave to Amend" was an acceptable substitute for the above requirement. Section 316(a)(1) now reads, in pertinent part:

> No ... modification shall become final until the holder of the license or permit ... shall be given reasonable opportunity ... to protest such proposed order of modification ... * * *
>
> (a)(3) A protest filed pursuant to this subsection shall be subject to the requirements of Section 309 for petitions to deny.

[5] We note in passing that in *Donovan Burke, supra*, the Commission discontinued its policy of affording applicant's specifying short-spaced sites the 30-day curative amendment opportunity established in *Trend Broadcasting, Inc., supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554
(Corrected)

In the Matter of

NECA's Proposed Revisions to
the Average Schedules for 1988

MEMORANDUM OPINION AND ORDER

Adopted: December 14, 1987; Released: December 21, 1987

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On June 30, 1987, the National Exchange Carrier Association, Inc. (NECA) proposed revisions to the average schedules that, under NECA's proposal, would have an effective date of January 1, 1988. In this Order, we decline to accept NECA's proposed revisions, provide corrective guidelines, and direct NECA to file proposed revisions, consistent with this Order, not later than May 2, 1988, with a proposed effective date of October 1, 1988.[1]

II. BACKGROUND.

2. In the April 1986 *Average Schedule Order*,[2] the Commission approved average schedule revisions that had been proposed by NECA on September 17, 1985. Those revisions, which became effective June 1, 1986, [3] were combined with subsequent modifications (directed principally to the line haul and special access portions of the average schedules)[4] that presently determine the compensation that average schedule exchange carriers receive pursuant to Section 69.606(a) of the Commission's Rules.[5] On June 30, 1987, NECA filed proposed revisions to the average schedules that were based, *inter alia*, on the "cost and average schedule company data which [were used by NECA to support] the September [17] 1985 filing."[6] NECA's 1987 average schedule filing requested that NECA's proposed revisions (the "1988 Proposed Revisions) become effective January 1, 1988. On July 7, 1987, the United States Court of Appeals for the District of Columbia Circuit remanded, for further consideration, that portion of the *Average Schedule Order* that approved the revisions NECA proposed on September 17, 1985.[7]

3. The 1988 Proposed Revisions retained the independent settlement variables,[8] and updated the numerical values in the formulas, that are presently used to compute interstate average schedule settlements. However, in this proposal NECA incorporated into the traffic sensitive and common line portions of the average schedules Carrier Access Billing (CABS) settlements and Access Administrative Cost (Administrative Expenses) settlements that are presently being treated as special reimbursement items.[9] These proposed modifications eliminate separate cost settlements for CABS and Administrative Expenses for average schedule companies that are being compensated for those expenses on the basis of actual cost data.[10] NECA has proposed that its adjustments to the common line and traffic sensitive portions of the average schedules be accepted as providing adequate compensation for CABS and Administrative Expenses.[11] On August 6, 1987, we invited comment on NECA's filing.[12]

III. PARTIES FILING COMMENTS.

4. Informal comments were filed by the Citizens Telephone Company, Inc. (Citizens), the Hickory Telephone Company (Hickory), and the Marianna and Scenery Hill Telephone Company (Mariana). Joint informal comments were filed by the Blue-Ridge Telephone Company, Nelson-Ball Ground Telephone Co., Glenwood Telephone Company, Progressive Rural Telephone Cooperative, Inc., Bulloch Rural Telephone Cooperative, Inc., Saluda Mountain Telephone Company, and the Pineville Telephone Company (collectively, "Group A). Formal comments were filed by the National Telephone Cooperative Association (NTCA) and the Ronan Telephone Company (Ronan). Formal joint comments were filed by the City of Brookings Municipal Telephone Company, Decatur Telephone Co., Dunnell Telephone Co., Kadoka Telephone Co., Jefferson Telephone Co., Mount Rushmore Telephone Co., National Utilities, Inc., North State Telephone Co., Northwest Iowa Telephone Co., Prairie Grove Telephone Co., Summit Telephone and Telegraph Co. of Alaska, Union Telephone Co., and the Pioneer Telephone Association, Inc. (collectively, "Group B). Reply comments were filed by the NECA, NTCA, Ronan, and Group B.

IV. POSITIONS OF THE PARTIES.

5. NTCA urges approval of the proposed revisions because: (1) NECA's proposal will result in "a more accurate and equitable division of interstate revenues";[13] (2) the revisions serve to reduce administrative complexities for average schedule companies;[14] (3) given the changes that have occurred in jurisdictional separations, costs, and demand growth, the revisions are both necessary and appropriate;[15] (4) the four-year transition that NECA has proposed for CABS and Administrative Expenses will ease the impact of the proposed modifications upon small companies.[16]

6. With the exceptions of NTCA and NECA,[17] the commenting parties object, in whole or in part, to NECA's proposed revisions. The Citizens, Hickory, and Marianna telephone companies express opposition because their settlements would be lowered, principally as a consequence of incorporating CABS and Administrative Expenses in the common line and traffic sensitive portions of the average schedules.[18] The Group A companies state that: (1) average schedule settlements should explicitly recognize that billing problems are becoming more complicated for small telephone companies as Feature Group A LATA-wide termination and Feature Group B originating and terminating traffic "is creating the need to render multiple CABS bills";[19] (2) meet point billing and the implementation of the new Uniform System of Accounts will result in additional expenses that have not been incorporated in the proposed revisions;[20] and (3) NECA's proposal should have included a minimum base amount, for each average schedule company, to reflect the fixed costs that are associated with CABS and Administrative Expenses.[21] In addition, Ronan and Group B observe that:

(1) smaller average schedule companies would inequitably experience a majority of the settlements decreases, while most of the larger average schedule companies would receive settlements increases;[22] (2) the proposed revisions should not be approved because, with the exception of CABS and Administrative Expenses, NECA's proposal merely updates average schedules that the United States Court of Appeals for the District of Columbia Circuit has already remanded to the Commission;[23] and (3) the methodologies, data, and samples that NECA employed to update the average schedules are sufficiently flawed that rejection is required.[24]

7. In response, NECA states, *inter alia*,[25] that: (1) average schedule companies have been placed on notice by NECA that special reimbursement items would continue "only until sufficient data were available to develop average formulas";[26] (2) "Part 69 Rules stipulate that CABS-related costs are traffic sensitive costs";[27] (3) under its proposal Administrative Expenses would be "allocated by Part 69 Rules between the common line and traffic sensitive elements";[28] (4) company size and traffic volumes do, in fact, correlate with CABS and Administrative Expenses;[29] (5) consistency with the Commission's Part 69 Rules and observed statistical correlations support the assignment of CABS costs "to traffic sensitive settlements" with the consequence that CABS Expenses would be settled on the basis of traffic sensitive minutes while Administrative Expenses "would be settled from both the traffic sensitive and common line pools";[30] (6) NECA's proposed three year transition for CABS and Administrative Expenses is sufficient to address transitional inequities;[31] and (7) its proposed revisions are supported by the record.[32] The NTCA reply observes that settlements that are partially based on costs (*i. e.*, special disbursement items such as CABS and Administrative Expenses) are not consistent with the intent and purpose of average schedules.[33] It asserts that the Group B attacks on NECA's average schedule development methodologies, if accorded credence, would substantively be "tantamount to having average schedule companies perform cost studies so that average schedule formulas can be derived."[34]

V. DISCUSSION.

8. Section 69.606(a) of the Commission's Rules requires, *inter alia*, that average schedule settlements "shall be designed to produce disbursements to an average schedule company that simulate the disbursements that would be received pursuant to § 69.607 by a company that is representative of average schedule companies." NECA's proposed revisions would, by their terms, become effective on January 1, 1988. Exchange carriers that receive settlements pursuant to § 69.607 have been required to implement fully five changes that affect their interstate access settlements by January 1, 1988. First, those carriers must convert their accounts to conform to the revised system of accounts that is contained in Part 32 of our Rules.[35] Second, exchange carriers must implement the new separations manual that is contained in Part 36 of our Rules.[36] Third, exchange carriers that receive settlements pursuant to Section 69.607 are subject to the requirements that were developed in CC Docket No. 86-111[37] and must comply with the regulated/non-regulated cost allocation requirements developed as a result of that docket. Fourth, those carriers must apportion costs among access elements in accordance with the revised Part 69 rules the Commission adopted to conform access charges with the Part 32 and 36 accounting and separations rules.[38] Fifth, carriers must compute revenue requirements to reflect reduced tax expenses resulting from the enactment of the provisions of the Tax Reform Act of 1986.[39] These complex, interrelated changes are not reflected in the data that were utilized by NECA in proposing changes to the average schedules. In our view, these changes are of sufficient importance that their interactive effects should be manifest in revisions to the average schedules. We therefore decline to accept the revisions to the average schedules that NECA has proposed and direct NECA:

> (1) to complete its sampling of the requisite data during 1988;[40] (2) to perform those computations that are necessary "to simulate the disbursements that would be received pursuant to § 69.607 by a company that is representative of average schedule companies"; (3) to propose corresponding revisions to the average schedules on May 2, 1988, that contain an effective date of October 1, 1988, that fully address each of the matters that have been discussed or referenced herein. NECA shall submit an explanation of the revised schedules that demonstrates that relevant effects of Parts 32, 36, and 69 changes, the Joint Cost rules, and the Tax Reform Act of 1986 have been accurately reflected in its computations.

9. Because we have reached our decision on the grounds that are discussed above, we do not specifically address the other issues concerning CABS and Administrative Expenses that have been raised by the parties to this proceeding. However, that notwithstanding, we expect that NECA will take cognizance of, and test, additional functional forms that explore the relationship between the base, or fixed, component of CABS and Administrative Expenses (*see* para. 6, *infra*) and total CABS and Administrative Expenses. We also expect that NECA will include in its May 6, 1988 filing any CABS or Administrative Expenses modification that, in light of additional investigation, NECA concludes will more closely "simulate the disbursements that would be received pursuant to § 69.607 by a company that is representative of average schedule companies." *See* 47 C.F.R. § 69.606(a).[41] A number of parties challenge NECA's treatment of CABS and Administrative Expenses. We agree with NECA that it is appropriate to provide for the recovery of these expenses in the average schedules. As NTCA observes, settlements partially based on costs are generally not consistent with the purpose and intent of the average schedules.[42]

VI. ORDERING CLAUSES.

10. ACCORDINGLY IT IS ORDERED that NECA shall file proposed revisions to the average schedules, as discussed herein, on May 2, 1988, with a proposed effective date of October 1, 1988.[43]

11. IT IS FURTHER ORDERED that the requirement contained in Section 69.606(b) of the Commission's Rules is waived for the calendar year ending December 31, 1988.[44]

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] This filing requirement supplants the certification or revisions that otherwise would be required by July 1, 1988 under Section 69.606(b) of the Commission's rules. *See* 47 C.F.R. § 69.606(b)(1986).

[2] Report and Order, In the Matter of MTS and WATS Market Structure: Average Schedule Companies, CC Docket No. 78-72, Phase I, 103 FCC 2d 1017 (*Average Schedule Order*) ; *recon.* FCC 86-411 (1986).

[3] *See id.*

[4] *See* In the Matter of Proposed Revisions to the Average Schedules, DA 86- 410 (released Dec. 30, 1986)(*Line Haul Revision Order*).

[5] Section 69.606(a) states: "Payments shall be made in accordance with a formula approved or modified by the Commission. Such formula shall be designed to produce disbursements to an average schedule company that simulate the disbursements that would be received pursuant to § 69.607 by a company that is representative of average schedule companies." 47 C.F.R. § 69.606(a)(1986).

[6] NECA "Modification of Average Schedules," filed June 30, 1987 (1987 Filing) at 1. NECA stated that it had updated the average schedule company "information. . . to include 1984 and 1985 costs and thus represents [sic] more current data. As a result, companies which were [Rural Electrification Administration] borrowers in years 1981 through 1985 were used to develop cost projections." NECA contends that this constitutes "an improvement from the 1985 filing where only 1981 through 1983 data [were] available." *Id.* at 2.

[7] City of Brookings Municipal Telephone Company, et al. v. Federal Communications Commission, 822 F.2d 1153, 1171-72 (D.C. Cir. 1987). On October 27, 1987, the Commission invited further comments on, *inter alia*, NECA's September 17, 1985 proposed revisions and on additional data that NECA filed on September 15 in response to questions by the Common Carrier Bureau. *See* Comment Dates Set On Remand Of Average Schedule Revisions, DA 87-1528 (released Oct. 27, 1987).

[8] Common line settlements are a function of access lines and access lines per exchange; traffic sensitive settlements are functions of switched access minutes and intertoll dial switching circuits; local transport settlements are functions of route miles, interstate circuit density, and the number of switched interstate terminations; and special access settlements are a function of special access revenues. *See* NECA's Proposed Revisions for 1988 at 32-34, *Average Schedule Order*, *Line Haul Revision Order*, and references cited therein.

[9] *See* 1987 Filing at 30-37; *Line Haul Revision Order* at para. 3, n.4. The common line and traffic sensitive portions of the average schedules were adjusted upwards to reflect the removal of these items from the special reimbursement category. *E. g.*, 1987 Filing at 30.

[10] *See* 1987 filing at 28-29, 37; NECA Reply at 12-18 (filed Oct. 8, 1987).

[11] *See* 1987 Filing at 28-29. NECA's proposal contains a three year supplemental CABS and Administrative Expenses payments transition for companies with less than 418 access lines. *See id.* at 29.

[12] Filing of Proposed Revisions to the Average Schedules, 52 Fed. Reg. 29255 (Aug. 6, 1987).

[13] NTCA comments at 1.

[14] *See id.* at 2-4.

[15] *See id.* at 3-6.

[16] *See id.* at 5.

[17] *See* NECA reply comments, *passim*.

[18] Citizens comments at 1, Hickory comments at 1, Marianna comments at 1.

[19] Group A comments at 1.

[20] *See id.* at 1.

[21] *See id. Accord*, Ronan comments at 4-5; Group B comments at 22-24. Both Group B and Ronan request that cost settlements for CABS and Administrative Expense continue.

[22] Ronan at 3; Group B comments at 23-24. *Accord* Group B reply comments at 3-4. *Cf.* Group A comments at 3.

[23] In light of our decision to defer consideration of modifications to the average schedules for reasons that are discussed in para. 8, *infra*, those issues that have been raised by Ronan, Group B, or any other parties that relate to, or arise from, the *City of Brookings* remand will be considered in the context of that proceeding and not here. *See* Comment Dates Set On Remand Of Average Schedule Revisions, DA 87-1528 (released Oct. 27, 1987). Ronan comments at 2; Group B comments at 1-3, 5. Group B reply comments at 2-3, 5- 6. Ronan also suggested that the existing average schedules (*see* para. 2, n.5, *supra)* be used in a price cap model that would exclude decrements for increases in productivity. Ronan reply comments at 3-5. Ronan's suggestions with respect to price caps are more properly addressed in the generic proceeding that is considering price cap issues [*See* Notice of Proposed Rule Making In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, released Aug. 21, 1987], and are thus deferred to that proceeding.

[24] Ronan at 1-3. Group B comments at 9-10, 12, 14-22.

[25] NECA and NTCA also responded to concerns raised by Ronan and Group B that would more properly be considered in the context of the *City of Brookings* remand proceeding. *See* note 23, *supra*, and note 43, *infra*.

[26] NECA reply at ii, 14-15.

[27] *Id.* at 15.

[28] *Id.*

[29] *See id.* at 15-16.

[30] *See id.* at 16.

[31] See id. at 17.

[32] Id., passim.

[33] NCTA reply comments at 6-8.

[34] See id. at 4-6.

[35] See generally Report and Order, FCC 86-221, 51 Fed. Reg. 24745 (July 8, 1986), 43493 (Dec. 2, 1986); recon. 2 FCC Rcd 1086 (1987).

[36] See In the Matter of MTS and WATS Market Structure, Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal- State Joint Board (CC Docket Nos. 78-72, 80-286, 86-297), FCC 87-134 (released May 1, 1987), 52 Fed. Reg. 17228 (May 6, 1987); In the Matter of Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113 (released Aug. 18, 1987), 52 Fed. Reg. 37308 (Oct. 6, 1987).

[37] See In the Matter of Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1305-05 (1987); recon. FCC 87-305 (released Oct. 16, 1987).

[38] See In the Matter of Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, 2 FCC Rcd 6447 (1987).

[39] Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986).

[40] See 1987 Filing at 6, n.4.

[41] We are not suggesting that modifications are required. However, we do expect that NECA will provide additional explication of its treatment of CABS and Administrative Expenses expenses that respond more fully to the concerns that were expressed by commenting parties.

[42] See Line Haul Revision Order at para. 11, n.26.

[43] The November 18, 1987 motion of the Group B companies to supplement the record, out of time, is denied.

[44] These actions are taken pursuant to the authority that is contained in Sections 0.291 and 69.606(a) of the Rules of the Federal Communications Commission. 47 C.F.R. §§ 0.291, 69.606(a)(1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166
Phase III, Part 1

In the Matter of

Investigation of Special Access
Tariffs of Local Exchange Carriers

ORDER INVITING COMMENTS AND REQUESTING DATA

Adopted: December 31, 1987; Released: January 15, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. The purpose of this Order is to establish procedures to obtain information necessary to comply with the decision of the United States Court of Appeals for the District of Columbia Circuit in *Western Union Telegraph Company v. F. C. C.*, 815 F.2d 1495 (1987). In that decision, the Court of Appeals affirmed in part and reversed in part the Commission's decisions regarding application of the Docket No. 20099 Settlement Agreement (Settlement Agreement)[1] to special access rates for the Other Common Carriers (OCCs). We are directing the Bell Operating Companies (BOCs) to calculate their refund obligations to the OCCs under the Court's decision and inviting them to comment on certain issues in the Commission's ongoing investigation of special access tariffs.

2. Prior to the effective date of the first special access tariffs, the OCCs generally secured local private line distribution facilities from American Telephone and Telegraph Company (AT&T) and the BOCs pursuant to the negotiated rates, terms and conditions embodied in the Docket 20099 Settlement Agreement.[2] These rates, which originally became effective in 1975, remained in effect for the next 10 years due to the failure of AT&T and the BOCs to propose cost-based revisions during this period.

3. In October 1983, the local exchange carriers (LECs) filed their first special access tariffs. Upon reviewing these filings, the Commission concluded that the Docket 20099 rates were unreasonably low because the rates were well below the level of the proposed initial cost-based special access rates. The Commission determined that continuing the Docket 20099 rates would place an excessive burden on other consumers and concluded that the Settlement Agreement was unjust, unreasonable and unduly preferential.

4. Accordingly, in November 1984, the Commission decided to abrogate the Settlement Agreement and directed the BOCs to increase their special access rates by 20 percent until the first special access tariffs became effective.[3] Because of the Commission's concern that moving from even these higher rates to cost-based rates could produce "rate shock" for the OCCs, the Commission adopted a plan that would gradually "equalize" the Settlement Agreement rates and full special access rates. Thus, the Rate Equalization Plan, or OCC Transition Plan, was adopted, covering circuits in place as of November 8, 1984.[4] OCCs would pay 50 percent of the standard tariffed rates for such circuits during the first six months after the effective date of the initial special access tariffs, 75 percent of the standard rates for the next six months and the full rate thereafter. In addition, the BOCs were prohibited from increasing non-discounted rates to recover any revenue shortfall resulting from the Transition Plan unless the BOC could show that the discount would lower its overall earnings to an unreasonable level.

5. In April 1987, the United States Court of Appeals for the D.C. Circuit affirmed in part and reversed in part the Commission's decisions regarding application of the Docket 20099 Settlement Agreement to special access rates for the OCCs. The Court upheld the Commission's decision to abrogate the Settlement Agreement and affirmed the agency's authority to prescribe transitional rate structures to avert "rate shock." The Court reversed, however, the Commission's conclusion that the notice provisions of the Settlement Agreement had been satisfied, and concluded that the Docket 20099 rates could not have been increased prior to June 3, 1985. The Court remanded the case to the Commission to calculate the appropriate monetary adjustments to be made as a result of the Court's decision. The Court also stated that the Commission is free to determine whether the transition should be modified as a result of the Court's decision. Petitions for rehearing filed by certain BOCs, Western Union and MCI were denied.

6. The Court opinion focused on the fact that the Settlement Agreement provided that the rates established therein could not be changed without six months' notice. The Court concluded that while the Commission purported to abrogate the entire Settlement Agreement, the Commission had failed to justify abrogating the six-months' notice and cost-support provisons of the Agreement. Therefore, although the Commission's finding that the Settlement Agreement rates were unlawful was valid, the remainder of the Agreement remained in effect. The Court then concluded that the Commission's action in allowing the final revised rates to become effective on April 1, 1985 did not comply with the six-months' notice requirement of the Settlement Agreement because the final rate schedule had been filed less than six months earlier, on December 3, 1984. The Court concluded, therefore, that the special access rates could not have properly taken effect before June 3, 1985. At the same time, the Court upheld the prescription of a transition period from the initial Settlement Agreement rates to the full special access rates.

II. DISCUSSION

7. The Court's decision requires a refund of special access charges above the rates established in the Docket No. 20099 Settlement Agreement for circuits in place as of November 8, 1984 for the period from November 13, 1984 through June 3, 1985. This includes the 20 percent increase over the Settlement Agreement rates from November 13 through April 1, 1985, and the difference between the Settlement Agreement rates and 50 percent of the initial special access tariff rates for the period April 1,

1985 through June 3, 1985. In addition, the decision requires refunds for OCC special access circuits that were added during the period from November 13, 1984 through June 3, 1985 to the extent that the rates charged for such circuits exceeded the Settlement Agreement rates that would have applied to them. Accordingly, we direct the BOCs to calculate the appropriate refund amounts for their OCC customers -- for circuits in service on November 8, 1984 as well as circuits put into service during the November 13, 1984 to June 3, 1985 period -- and to file that information with the Commission, including the data upon which such calculations are based.

8. We also invite the BOCs to discuss in these filings any issues that are raised by the remand. Such issues include the effect of any refund upon the National Exchange Carrier Association (NECA) traffic sensitive pool. About half of the BOCs were members of NECA's traffic sensitive pool during the period for which refunds are required. Interested parties may wish to address whether this refund liability should apply only to the BOC pool members or whether it should be shared in some way by all members of the traffic sensitive pool.

9. Since the Settlement Agreement rates were incorporated in tariffed service offerings, any OCC that obtained special access circuits pursuant to such tariffed offerings would appear to be entitled to appropriate refunds. On the other hand, it could be argued that only OCCs that were parties to the Settlement Agreement are entitled to the mandated refunds. We invite comments on this issue.

10. The Court also stated that the Commission may reconsider the Transition Plan in light of its determination that the Settlement Agreement rates could not be increased prior to June 3, 1985. In other words, the Commission is free to consider whether the rate prescription of the Transition Plan should be modified in light of the remand. We invite comments on this issue. The purpose of the OCC Transition was to reduce the incidence of "rate shock" to the OCCs in moving from the unreasonably low Settlement Agreement rates to the initial special access tariffs. The Commission adopted the Transition Plan because substantially higher access charges might have impaired the ability of some OCCs to compete effectively in the interexchange market. In considering, therefore, whether the rates or rate structure established by the now completed Transition Plan should be modified, commenters should demonstrate how any suggested modifications advance the purposes for which the Transition Plan was adopted. In as much as the Court's decision gives the OCCs lower rates than they had under the Transition Plan for the period from November 13, 1984 through June 3, 1985, commenters may also wish to examine whether the transitional rates or rate structure should be modified to prevent the OCCs from gaining more substantial relief than was contemplated by the Commission in prescribing the Transition Plan. We anticipate that these questions may be better addressed once we have some idea of the size of the prospective refunds due the OCCs under the Court's decision.

11. A number of petitions for reconsideration and applications for review are pending before the Commission in CC Docket No. 85-166 relating to issues arising from the OCC Transition Plan. These include (1) a petition filed by Western Union seeking further reconsideration of the determination that the duration of the Transition Plan would not be tied to completion of the overall special access investigation;[5] (2) various petitions for reconsideration or review of this Bureau's decision to extend the transition temporarily in certain states and to terminate the rate level portion of the Docket 85-166 investigation for certain BOCs;[6] and (3) US West's response to an Order to Show Cause relating to refunds of excessive special access rates for the April through September 1985 rate period.[7] We invite comments from interested parties on the impact, if any, of the Court's remand of the initiation of the OCC Transition Plan on these issues. Commenters should address not only the impact of the mandated refunds on these issues, but also the effect that any further modifications to the Transition Plan rates would have on these pending proceedings.

12. We will require data submissions containing the refunds calculated by the BOCs, including the data on which such calculations are based, to be filed not later than February 29, 1988. Such data submissions may include comments on the issues discussed herein and on any other issues which are pertinent to the calculation of the Court-mandated refunds. Comments by other interested parties may be filed not later than **March 30, 1988.** Reply comments may be filed not later than **April 14, 1988.**

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that the Bell Operating Companies SHALL CALCULATE the refunds due the Other Common Carriers of charges for special access services, calculated as set forth herein, for the period November 13, 1984 through June 3, 1985, including all supporting data used in making such calculations, and shall file this information not later than February 29, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* AT&T Co., 52 FCC 2d 727 (1975), *aff d sub nom.* Carpenter v. F.C.C., 539 F.2d 242 (D.C. Cir. 1976).

[2] The parties to the Settlement Agreement included AT&T, the former associated Bell System Companies, American Satellite Corporation, Data Transmission Company, ITT World Comunications, Inc., MCI Telecommunications Corporation and associated companies, RCA Global Communications, Inc., Southern Pacific Communications Company and Transportation Microwave Corporation, the Western Union Telegraph Company and other Western Union companies. *See* 52 FCC 2d at 742-43.

[3] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 84-524, released Nov. 9, 1984. The initial special access tariffs were allowed to become effective on April 1, 1985.

[4] In March 1986, this Bureau temporarily extended the Transition Plan in 15 BOC study areas because it appeared that the BOCs' earnings on special access services in these study areas would exceed authorized levels upon the occurrence of the last step of the Transition Plan, on April 1, 1986. We ordered the

BOCs in question to either justify their rates or lower them. This action is the subject of a pending petition for reconsideration and two applications for review. *See* para. 10, *infra*.

[5] Western Union Telegraph Company Petition for Reconsideration, filed Feb. 26, 1986. *See also* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, FCC 85-100, released Mar. 8, 1985, at para. 37; *aff'd* FCC 86-54, released Jan. 24, 1986.

[6] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, Mimeo No. 3436, released Mar. 27, 1986 (*Extension Order*). Applications for review of the *Extension Order* were filed by American Telephone and Telegraph Company and Western Union Telegraph Company. Southwestern Bell Telephone Company filed a petition for reconsideration. Southwestern Bell, Western Union, RCA Communications, Inc., ADAPSO, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone and Telegraph Company and Pacific Northwest Bell Telephone Company filed oppositions, replies and comments.

[7] US West Response to Order to Show Cause, filed May 1, 1986; *see also Extension Order* at paras. 20-21.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-574

In re Applications of

DOVE, INC. (hereafter Dove)	File No. BPH-860729MA
CHILHOWEE COMMUNICATIONS, LTD. (hereafter Chilhowee)	File No. BPH-860730MA
ELIZABETH F. NICHOLSON (hereafter Nicholson)	File No. BPH-860730MB
BLOUNT COUNTY BROADCASTING CORPORATION (hereafter Blount)	File No. BPH-860730MD
GATEWAY BROADCASTING CORPORATION (hereafter Gateway)	File No. BPH-860730MJ

For Construction Permit for a New FM Station, Maryville, Tennessee, Channel 239A.

HEARING DESIGNATION ORDER

Adopted: December 14, 1987; Released: January 15, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m, or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. City Coverage. None of the applicants' proposals provide 70 dBu coverage over the entire community of Maryville as required by 47 C.F.R. § 73.315. All five applicants requested a waiver of the rule. Several reasons for granting a waiver have been profferred. First, a site restriction was placed on the allocation. The *Report and Order* in Docket No 85-311, Mimeo 4705, released May 23, 1986, placed a restriction on the transmitter site for the allocation of Channel 239A to Maryville, Tennessee be located 6.9 kilometers northeast of the community so as to avoid a conflict with WCVP-FM, Robbinsville, North Carolina. With such restrictions applying, all applicants have stated that it is impossible to provide 70 dBu coverage over the entire city of Maryville without creating short-spacing to WCVP. However, the applicants propose to cover at least 90% of the city of Maryville. Finally, while a grant of the waiver request would be recommended for the heretofore mentioned reasons, the Commission no longer requires a waiver request where an applicant proposes to include more than 80 percent of the community of license within the 3.16 mV/m contour. *See Letter to Southwest Communications, Inc.* from Dennis Williams, Acting Chief, FM Branch, (reference 8920-HVT), July 16, 1986, citing *John R. Hughes et al.*, 50 Fed. Reg. 5679 (1985). Because all applicants propose to cover at least 90 percent of the area, they are considered to be in full compliance with 47 C.F.R. § 73.315, and, all waiver requests will be dismissed as moot.

4. Chilhowee/Blount. Where an applicant for a new broadcast station proposes to employ five or more fulltime employees, 47 C.F.R. § 73.2080 requires that applicant to submit an equal employment opportunity (EEO) program with his application. Section VI of FCC Form 301 specifies the use of a five-point format set out in FCC Form 396A. The EEO programs supplied in the applications of Chilhowee and Blount were deficient in that they failed to include, within those sections pertaining to recruitment and training, adequate examples of minority organizations, employment services, publication, and educational institutions, which will be used by the applicant to effectuate its program. Accordingly, Chilhowee and Blount will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order or an appropriate issue will be specified by the Judge.

5. Gateway. Applicant Gateway has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. However, the applicant has submitted a good cause showing for the acceptance of its late filed amendment as is required by 47 C.F.R. § 73.3522(a)(2). The showing states that the F.A.A. would issue a determination of "no hazard" only if Gateway reduced its proposed tower height by 3.0 meters. The instant amendment is Gateway's attempt to comply with the F.A.A. suggestion while retaining its originally-proposed coverage. Under Section 73.3522(a)(2) of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	DATE AMENDMENT RECEIVED
Gateway	October 9, 1987

6. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding. APPLICANTS: Dove, Chilhowee and Blount

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the applicants below, whether there is a reasonable possibility that the tower height and location would constitute a hazard to air navigation: Dove, Chilhowee and Blount.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That the requests for waiver of Section 73.315(a) filed by all applicants ARE DISMISSED AS MOOT.

10. IT IS FURTHER ORDERED, That Chilhowee and Blount will file data relative to sections III and IV of its model EEO Program, as specified in paragraph 4 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein: Gateway

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That in addition to the copy served to the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than February 4, 1988, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-576

In re Applications of

TELE-COMMUNICATIONS OF KEY WEST, INC. — File No. 3282-CM-P-80

and

Robert A. Gordon d/b/a THE BA COMPANY — File No. 3751-CM-P-80

For Construction Permits in the Multipoint Distribution Service for a new station on Channel 1 at Key West, Florida.

MEMORANDUM OPINION AND ORDER

Adopted December 11, 1987; Released January 15, 1988

By the Common Carrier Bureau:

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Key West, Florida. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, IT IS HEREBY ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the above-captioned applications ARE DESIGNATED FOR HEARING, in a CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. IT IS FURTHER ORDERED, That Tele-Communications of Key West, Inc, Robert A. Gordon d/b/a The BA Company and the Chief of the Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. IT IS FURTHER ORDERED, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 C.F.R. § 1.221.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-577

In re Applications of

JANE A. FILLER d/b/a PITTSBURG RADIO (hereafter Pittsburg) — File No. BPH-860123MH

DON H. BARDEN (hereafter Barden) — File No. BPH-860123MI

For Construction Permit for
FM Station, Channel 245A, 96.9 MHz
Pittsburg, Texas

HEARING DESIGNATION ORDER

Adopted: December 15, 1987; Released: January 15, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Pittsburg*. In response to Item 9, Section V-B of Form 301, Pittsburg has stated that the overall tower height above ground without obstruction lighting is 657 feet. However, engineering analysis of Pittsburg's application, specifically Section V-G and the tower sketch submitted in Exhibit E-5 reveals that the 657 feet figure is the height of the tower above mean sea level without obstruction lighting. This error has no effect on the acceptability of Pittsburg's application, which complies with all of our technical acceptance requirements. However, to rectify this error, Pittsburg will be required to file an amendment with the presiding Administrative Law Judge within 30 days of the date of this Order which correctly specifies the height of its tower above ground level without obstruction lighting.

3. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Pittsburg	August 6, 1986; October 14, 1986; December 22, 1986; March 18, 1987; November 30, 1987
Barden	April 30, 1987; August 14, 1987; August 25, 1987; September 16, 1987; September 25, 1987; October 27, 1987

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That Pittsburg file an amendment with the presiding Administrative Law Judge within 30 days of the date of this Order which specifies the height of its tower above ground without obstruction lighting.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Pittsburg (8/6/86, 10/14/86, 12/22/86, 3/18/87, 11/30/87); Barden (4/30/87, 8/14/87, 8/25/87, 9/16/87, 9/25/87, 10/27/87).

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 4, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Tymnet-McDonnell Douglas
Network Systems Company

Complainant File No. E-86-102

v.

American Telephone and Telegraph
Company

Defendant

ORDER

Adopted December 24, 1987; Released January 15, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. We have before us a joint motion filed on December 23, 1987 by Tymnet-McDonnell Douglas Network Systems Company (Tymnet) and American Telephone and Telegraph Company (AT&T) requesting that we dismiss with prejudice the above-referenced proceeding and authorize the parties' agreement to settle all issues raised in the matter. For the reasons set forth below the joint motion is granted.

2. This proceeding was initiated by a formal complaint filed by Tymnet against AT&T on July 18, 1986 alleging that AT&T's rates for 56 kilobits per second (Kbps) Dataphone Digital Service (DDS) were unjust and unreasonable within the meaning of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). AT&T denied such allegations and moved to dismiss the complaint. After the pleading cycle ended, the parties entered into settlement negotiations with the cooperation of the Enforcement Division. As a result of these negotiations, the parties reached an agreement of settlement that resolves the controversy.

3. Tymnet and AT&T represent that their agreement resolves the claims alleged in the complaint in a manner acceptable to both parties. The parties submit that a grant of their motion will be consistent with the public interest in that it will terminate the proceeding in a manner satisfactory to both, and conserve the time and resources of the parties and the Commission.

4. Under Section 1.713 of the Commission's rules, 47 C.F.R. § 1.713, we must determine whether authorization of a settlement agreement is consistent with the public interest where such agreement resolves a controversy in which damages had been sought as a result of an alleged violation of the Communications Act. We have reviewed the terms of the agreement between the parties in this regard and find that approval of the settlement agreement and dismissal of the complaint would be consistent with the public interest. Consequently, we will grant the joint motion of the parties.

5. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. §0.291, that the "Joint Motion to Authorize Settlement and Dismiss Complaint" filed by Tymnet McDonnell Douglas Network Systems Company and American Telephone and Telegraph Company IS GRANTED.

6. IT IS FURTHER ORDERED, pursuant to Section 1.713 of the rules, 47 C.F.R. § 1.713, that the "Settlement Agreement" between Tymnet McDonnell Douglas Network Systems Company and American Telephone and Telegraph Company filed by Tymnet and AT&T IS AUTHORIZED.

7. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Contel Cellular of El Paso, Inc.

Complainant File No. E-86-93

v.

Southwestern Bell Telephone Company

Defendant

ORDER

Adopted December 24, 1987; Released January 15, 1988

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On June 11, 1986, Contel Cellular of El Paso, Inc. (Contel) filed a formal complaint against Southwestern Bell Telephone Company (SW Bell) alleging that SW Bell's attempt to impose recurring charges for the assignment of a NXX code to Contel violated Section 202(a) the Communications Act, 47 U.S.C. § 202(a). SW Bell denied such allegations and moved to dismiss the complaint. After the pleading cycle ended, the parties entered into negotiations, including consultation with the Enforcement Division, aimed at settling the matters in controversy. By letter dated December 21, 1987, counsel for the plaintiff advised the Commission that the parties had resolved all matters pertaining to charges for assignment of NXX codes and requested permission to withdraw its complaint without prejudice.

2. We have carefully reviewed this matter and, in accordance with Section 1.713 of the Commission rules, 47 C.F.R. § 1.713, we find that the public interest would be served by dismissing the complaint.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the above-captioned complaint IS DISMISSED without prejudice and this proceeding IS HEREBY TERMINATED.

FEDERAL COMMUNIATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

Adopted: November 27, 1987; Released: January 15, 1988

Sainte Limited
P. O. Box 4159
Modesto, California 95352-4159

Gentlemen:

This refers to the application (BAPCT-870123KE), for Commission consent to the assignment of the construction permit of unbuilt station KBCP(TV), Channel 46, Paradise, California, from William M. and Nancy C. Holdinghausen, d/b/a Butte Creek Communications Company, to Sainte Limited (Sainte).[1] You are the licensee of KCSO(TV), Modesto, California, and the acquisition of KBCP(TV) will result in overlap of the Grade B contours of both stations. You propose to operate KBCP(TV) as a 100 percent satellite of KCSO(TV) and request a grant of the assignment application pursuant to the "satellite exception" provision to the Commission's duopoly rule for television stations.[2]

Section 73.3555(a)(3) of the Commission's Rules provides that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in overlap of the Grade B contours of the existing and proposed stations. However, Note 5 to the rule exempts television stations that are "satellite operations" from the strict application of the Grade B overlap prohibition. Under Note 5, the Commission considers satellite proposals on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest.

In support of your proposal to operate KBCP(TV) as a 100 percent satellite of KCSO(TV), you point out that KCSO(TV) is an affiliate of the Spanish International Network (SIN) and broadcasts primarily SIN's Spanish language programming. You have submitted an engineering statement which indicates that the overlap of the predicted Grade B contours of both stations is minimal. The report indicates that the overlap area between KBCP(TV) and KCSO(TV) encompasses 315.2 square miles and a population of 31,444 persons. The Grade B contour of KBCP(TV) encompasses 8,439 square miles and a population of 404,704; the Grade B contour of KCSO(TV) encompasses 10,136 square miles and a population of 1,549,044. The resulting overlap area represents 2.43 percent of the population within the Grade B contour of KCSO(TV) and 7.77 percent of the population within the Grade B contour of KBCP(TV). Paradise, you state, is a small community in northern California and has a population of 22,571. Paradise is included in the Chico-Redding market, which is ranked by Arbitron as the 141st largest television market and is the 75th largest Hispanic market, with a total of 5,700 Hispanic television households. You note that Paradise has no local operating full-service television station but receives services from KHSL-TV (CBS) and KCPM(TV) (NBC) in Chico, California. While noting that you have a prior history of putting television stations on the air as satellites and then, when financially feasible, converting them to full-service television stations (i.e., KCBA-TV, Salinas, California), you assert that you intend to establish a studio in Paradise for local originations in the future, as the market improves. In addition, you contend a grant of your application will provide local Spanish language programming to residents of Paradise and northern California.

In the past, we have authorized satellite stations in situations where overlap would exist between the parent and the satellite station as a means of providing television service to small communities having an insufficient economic base to support a full-service operation. One means of carrying out the goal of bringing service to these communities is reflected in Note 5 to Section 73.3555(a)(3) of the Rules, which relaxes the multiple ownership rules for a station operating as a satellite or "primarily as a satellite." When satellites were first considered, they were authorized only in communities having no local television service. *Multiple Ownership Rules*, 45 FCC 1728, 1735 (1964). Paradise is such a case. That standard has evolved over the years in order to provide the public in smaller markets with a choice of programs. We have also authorized primarily satellite operations in situations where there is an existing full-service station licensed to the same community, or where both stations serve substantially the same area, although licensed to different communities. *See e.g., Capitol Broadcasting Co.*, 54 R.R. 2d 811 (1983). The Commission's policy is not to authorize a 100-percent satellite in such circumstances. *See , e. g., Midcontinent Broadcasting Co. of Wisconsin*, 12 F.C.C. 2d 111 (1968). In this case, the proposed Paradise satellite will provide principal-community coverage to Chico, which is about ten miles away. Further, approximately 90 percent of the proposed Paradise Grade B contour is within the contour of full-service station KHSL-TV, Chico. Thus, the two stations serve substantially the same area and, consistent with the *Capitol* and *Midcontinent* cases, Sainte will be required to establish a main studio for its proposed station within two years of the commencement of program tests, and thereafter originate some local programming.

We conclude that a sufficient showing has been made to justify authorization of a satellite operation in Paradise. It is noted that the Chico-Redding market, which is the 140th television market, is comparable to markets where satellite service has been authorized. *See Capitol* and *Midcontinent*, above. We believe that grant of the requested waiver represents the only likely means by which the station can be placed on the air. As noted, Sainte will establish a studio in Paradise for local originations in the future. Thus, a grant of the request will enable Sainte to provide a first local television outlet to Paradise. In view of the above circumstances, and finding the applicants fully qualified, we believe that the proposed parent-satellite operation will serve the public interest, convenience and necessity.

Accordingly, the application of William M. and Nancy C. Holdinghausen, d/b/a Butte Creek Communications Company, to assign the construction permit of Station KBCP(TV) (including translator station K22AV, Westwood, California), Channel 46, Paradise, California, to Sainte Limited, IS GRANTED.

BY DIRECTION OF THE COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-575

In re Applications of

OLNEY BROADCASTING COMPANY (hereafter Olney) File No. BPH-860905MB

WES - TEX BROADCASTING, INC. (hereafter Wes-Tex) File No. BPH-860908MA

For Construction Permit for
New FM Station, Channel 248C2; 97.5 MHz
Olney, Texas

HEARING DESIGNATION ORDER

Adopted: December 14, 1987; Released: January 15, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Wes Tex.* In response to Item 6, Section V-B of FCC 301, Wes-Tex has indicated an antenna height above average terrain (HAAT) of 124.4 meters. However, engineering analysis of the application reveals a value of 150 meters. This determination was made utilizing 47 C.F.R. § 73.313(d)(4) and the eight radials listed in Item 15 of Section V-B. This error has no effect on the acceptability of Wes-Tex's application, which complies with all our technical acceptance requirements. However, Wes-Tex will be required to file an amendment with the presiding Administrative Law Judge within 30 days of this Order which correctly specifies its HAAT.

3. Wes-Tex has indicated that its antenna will be mounted on the existing tower of two land mobile stations. The Federal Aviation Administration has approved this tower at its current height of 119 meters. However, Wes-Tex's antenna will be mounted at 129 meters above ground. As of December 8, 1987, we have no record that the FAA has approved the increased height of the tower. Accordingly, an appropriate issue will be specified and the FAA made a party to the proceeding.

4. *Other matters.* The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Wes-Tex	July 17, 1987

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Wes-Tex would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That Wes-Tex file an amendment with the presiding Administrative Law Judge within 30 days of the date of this Order specifying the correct height of its antenna above average terrain.

9. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

10. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein: Wes-Tex (7/17/87).

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **February 4, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 12, 1988

PLEADING SCHEDULE ESTABLISHED FOR AMENDING OR UPDATING PENDING POLE ATTACHMENT COMPLAINTS

Effective with the release of this notice, the Commission will again process pole attachment complaints. In a Public Notice dated October 21, 1985 (Mimeo No. 0399) the Commission announced that it would hold pole attachment matters in abeyance until further notice. Although it has been accepting new complaints, respondents were not required to answer until further notice.

The Commission has reexamined its rules and policies governing the attachment of cable television hardware to poles owned or controlled by telephone or electric utilities and released an order addressing those issues. *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4389 (1987). Therefore, any new complaints filed at the Commission should reflect the rules, policies, and formulas established therein. Pending complaints (including those remanded by courts) should be amended to reflect these new rules, policies, and formulas. Amended pleadings which involve the issue of unjust or unreasonable rates should include the necessary additional cost data, calculations, and proposed rates based not only on the year of the data as last updated in the complaint prior to October 1985, but also for year end 1985, year end 1986, and, if available, year end 1987. The data should be presented separately for each year.

The pleading cycle set forth in Section 1.1407(a) of the Rules, 47 C.F.R. § 1.1407(a) (that is, 30 days from the date the complaint is filed for the response and 20 days from the date the response is filed for the reply) is now in effect for all complaints filed on or after the date of this Notice.

The following pleading cycle is established for amendments to pending pole attachment complaints, responses or amended responses thereto, and replies or amended replies thereto:

Amended complaints: On or before April 15, 1988.

Responses or amended responses: 30 days from the date the amended complaint is filed.

Replies or amended replies: 20 days from the date the response or amended response is filed.

If a complaint does not otherwise need to be amended, but complainant wishes to prosecute the complaint, complainant should submit a letter advising us of this fact on or before April 15, 1988, with service to all parties. Respondents may file an amended response within 30 days of the filing date of such letters. If a complainant files neither an amendment nor a letter stating that it still wishes to prosecute the complaint, the complaint will be dismissed for failure to prosecute.

We do not contemplate granting extensions of time from this timetable. The initial date was selected to provide ample time for the complainants to request additional cost data from respondents and for respondents to gather the necessary information. Therefore, both parties should be compiling information in this initial period before the amended complaint is due. However, if the respondent has not provided the complainant with requested data within 45 days of complainant's data request, pursuant to Section 1.1404(h) of the Rules, 47 C.F.R. § 1.1404(h), complainant may file its amended complaint at that time along with an affidavit detailing its attempt to obtain data from respondent. (Although Section 1.1404(h) of the Rules, provides that the utility should supply requested data within 30 days of the data request, we are allowing an extra 15 days because the data requested may cover several years. If the utility does not respond to the data request, but first presents the data in its response to the complaint, the complainant may request additional time to file its reply.) Complainants may amend their complaints before April 15, 1988, once they have obtained the necessary updated information.

See attached Appendix for a list of pending pole attachment complaints.

For futher information contact Lenworth Smith at (202) 632-4887.

FEDERAL COMMUNICATIONS COMMISSION

APPENDIX

The following pending pole attachment complaints are currently on file with the Commission and are embraced by the requirements of this order

	File Number	State, City Complainant v. Respondent	Date Filed
1	PA-82-074 Appln/Rev	New Hampshire, Boscawen, et al. Continental Cablevision of New Hampshire, Inc. v. Concord Electric Company	8/15/85
2	PA-83-028 Complaint	Alabama, Mobile, et al. Alabama Power Company v. Group W Cable, Inc.	6/27/83
3	PA-83-037 Complaint	Virginia, James City County, et al. Continental Cablevision of Virginia, Inc. v. Virginia Electric Power Company	9/16/83
4	PA-84-013 Appln/Rev	Minnesota, St. Paul Nor-West Cable Communications Partnership v. Northwestern Bell Telephone Company Northern States Power Company	6/21/85
5	PA-85-005 Appln/Rev	New Mexico, Roswell Capital Cities Cable, Inc. v. Southwestern Public Service Company	10/11/85
6	PA-85-006 Complaint	Florida, Tierra Verde, et al. Centel Cable Television of Florida v. Florida Power Corporation	3/26/85
7	PA-85-007 Complaint	Maryland, Cambridge, et al. Delaware, Dagsboro, et al. Simmons Communications of Delaware-Maryland v. Delmarva Power & Light Company	4/5/85
8	PA-85-008 Complaint	Virginia, Hanover County Continental Cablevision of Virginia v. Virginia Power Co.	5/10/85
9	PA-85-009 Complaint	Kansas, Various Communities Missouri, Various Communities Landmark Cablevision Associates, et al. v. Kansas City Power & Light Company	5/30/85

10	PA-85-010 Complaint	Pennsylvania, Various Communities Video-Link, Inc., et al. v. West Penn Power Company	7/10/85
11	PA-85-011 Pet/Recon	Pennsylvania, Various Communities Video Link, Inc., et al. v. The Bell Telephone Company of Pennsylvania	10/15/85
12	PA-85-012 Complaint	New Hampshire, Belknap, et al. Cablevision Service Co., Inc. v. Public Service Company of New Hampshire	7/18/85
13	PA-85-014 Complaint	Nevada, Las Vegas Community Cable TV v. Central Telephone Company Nevada Power Company	8/06/85
14	PA-85-015 Complaint	Missouri, Various Communities Missouri Cable Television Association v. Union Electric Company	8/07/85
15	PA-85-016 Complaint	Virginia, Gloucester County First Commonwealth Communications, Inc. v. Virginia Power Company	8/12/85
16	PA-85-017 Complaint	Missouri, Olivette, et al. Cencom of Missouri v. Union Electric Company	8/14/85
17	PA-85-018 Complaint	Missouri, St. Louis County Continental Cablevision of St. Louis County, Inc. v. Union Electric Company	8/22/85
18	PA-85-019 Complaint	Texas, Palestine, et al. Texas Power & Light v. Group W Cable, Inc.	8/28/85
19	PA-85-020 Complaint	Kentucky, Louisville, et al. Storer Communications of Jefferson County, Inc. v. South Central Bell Telephone Company	8/27/85
20	PA-86-001 Complaint	Kentucky, Shelbyville, et al. Cencom of Kentucky v. South Central Bell Telephone Company	10/25/85

21	PA-86-002 Complaint	Florida, Belleview, et al. Centel Cable Television of Florida v. Florida Power Corporation	12/06/85
22	PA-86-003 Complaint	Pennsylvania, Cannonsburg, et al. Astro-Cablevision Corporation v. West Penn Power Company	12/30/85
23	PA-86-004 Complaint	Kansas, Texarkana Texas, Texarkana Times Mirror Cable Television of Texarkana, Inc. v. Southwestern Electric Power Company	2/10/86
24	PA-86-005 Complaint	Texas, Longview, Kilgore Longview Cable TV Company, Inc. Kilgore Cable TV, Inc. v. Southwestern Electric Power Company	2/13/86
25	PA-86-006 Complaint	West Virginia, Auburn, et al. Cablentertainment, Inc. v. Monongahela Power Company	3/4/86
26	PA-86-007 Complaint	Pennsylvania, Various communities Astro Cablevision Corp. d/b/a Newchannels Cable TV v. Bell Telephone Company of Pennsylvania	3/5/86
27	PA-86-008 Complaint	Pennsylvania, Various communities Astro Cablevision Corp. d/b/a Newchannels Cable TV v. Duquesne Light Company	3/5/86
28	PA-86-009 Complaint	Wisconsin, Superior and vicinity Group W Cable, Inc. v. Wisconsin Telephone Company	4/9/86
29	PA-86-010 Complaint	Texas, Baytown, et al. Group W Cable, Inc., and Southwest Video Corporation v. Houston Lighting & Power Company	4/10/86
30	PA-86-011 Complaint	Iowa, Keokuk Continental Cablevision of Illinois v. Northwestern Bell Telephone Company	5/12/86

31	PA-87-001 Complaint	Texas, Gilmer Gilmer Cable Television Company, Inc. v. Southwestern Electric Power Co.	10/31/86
32	PA-87-002 Complaint	Texas, Henderson, et al. Arkansas, Mena, et al. Teleservice Corp of America, Inc., et al. v. Southwestern Electric Power Co.	1/21/87
33	PA-87-003 Complaint	Florida, St. Petersburg, et al. ATC Holdings, Inc. and KBLCOM, Inc., dba The Enrcom v. Florida Power Corporation	2/4/87
34	PA-87-004 Complaint	Florida, Bowling Green Centel Cable Television Company of Florida v. Florida Power Corporation	3/17/87
35	PA-87-005 Complaint	Florida, Polk County Centel Cable Television Company of Florida v. Florida Power Corporation	3/17/87
36	PA-87-006 Complaint	Virginia, Newport News Newport News Cablevision, Ltd. v. Virginia Electric and Power Company, d/b/a Virginia Power Company	3/27/87
37	PA-87-007 Complaint	South Carolina, Hampton County Savannah Cablevision, Inc. v. South Carolina Electric & Gas Company,	6/30/87
38	PA-87-008 Complaint	Florida, Various communities Cablevision Industries of Middle Florida, Inc., et al. v. Florida Power Corporation	7/01/87
39	PA-87-009 Complaint	Florida, Various communities Warner Cable Communications, Inc. v. Gulf Power Company	7/08/87
40	PA-87-010 Complaint	Pennsylvania, Washington TMCT of Washington, Pennsylvania v. Quaker State Telephone Company	7/15/87
41	PA-87-011 Complaint	Pennsylvania, Various communities Raystay Company v. United Telephone Company of Pennsylvania	7/24/87

42	PA-87-012 Complaint	Florida, Perry et al. Comcast Cablevision of Perry, Inc. v. Florida Power Corporation	7/24/87
43	PA-87-013 Complaint	Pennsylvania, Rice et al. Service Electric Cable TV, Inc. v. Commonwealth Telephone Company	8/10/87
44	PA-87-014 Complaint	Pennsylvania, Lebanon County et al. Lebanon Valley Cable TV Company v. Metropolitan Edison Company	8/11/87
45	PA-87-015 Complaint	Florida, Various communities Vision Cable of Pinellas, Inc. v. Florida Power Corporation	8/17/87
46	PA-87-016 Complaint	Arkansas, Murfreesboro Tempo Cable, Inc. v. Southwestern Electric Power Company	9/22/87

POLE ATTACHMENT COMPLAINTS ON REMAND FROM THE COURTS

1. Alabama Power Co. v. FCC, 773 F.2d 362 (D.C. Cir. 1985), *remanding* Teleprompter Corp. v. Alabama Power Co. (PA-81-014), FCC 83-500 (released Nov. 3, 1983).

2. Duke Power Co. v. FCC, No. 84-2253 (4th Cir. June 15, 1987) *remanding* Booth American Co. v. Duke Power Co. (PA-82-068), FCC 84-440 (released Sept. 20, 1984).

3. Florida Power Corp. v. FCC, No. 85-3449 (11th Cir. Sept. 25, 1987), *remanding* Gulfstream Cablevision of Pinellas County, Inc. v. Florida Power Corp. (PA-84-016), FCC 85-257 (released May 17, 1985).

4. Florida Power Corp. v. FCC, No. 85-5535 (11th Cir. Sept. 25, 1987), *remanding* Scripps-Howard Cable Services d/b/a Cablevision v. Florida Power Corp. (PA-85-003), FCC 85-299 (released June 10, 1985).

5. Florida Power Corp. v. FCC, No. 84-3683 (11th Cir. July 23, 1987), *remanding* Teleprompter Corp. v. Florida Power Corp. (PA-81-008, PA-81-023, PA-82-005), FCC 84-419 (released Sept. 28, 1984).

6. Florida Power Corp. v. FCC, No. 85-3904 (11th Cir. July 23, 1987), *remanding* American Television and Communications Corp. v. Florida Power Corp. (PA-83-035, PA-84-004) FCC 84-598 (released Dec. 5, 1984).

7. Georgia Power Co. v. FCC No. 84-1107 (D.C. Cir Mar. 31, 1987), *remanding* Georgia Power Co. v. Columbus Cablevision (PA-80-022), FCC 84-408 (released Aug. 31, 1984).

8. Georgia Power Co. v. FCC, No. 84-1494 (D.C. Cir. Mar. 13, 1987), *remanding* Cablevision of Augusta, Inc. v. Georgia Power Co. (PA-83-013, PA-83-014, PA-83-015, PA-83-022, PA-83-023, PA-84-002, PA-84-003), FCC 84-410 (released Sept. 7, 1984).

9. Georgia Power Co. v. FCC, No. 84-1495 (D.C. Cir. Mar. 13, 1987), *remanding* Liberty TV Cable, Inc. v. Georgia Power Co. (PA-82-008), FCC 84-441 (released Sept. 20, 1984).

10. Mississippi Power & Light Co. v. FCC, No. 85-4723 (5th Cir. June 2, 1987), *remanding* David Bailey, d/b/a Port Gibson Cable TV v. Mississippi Power & Light Co. (PA-83-026), FCC 85-483 (released Sept. 11, 1985).

11. Southwestern Electric Power Co. v. FCC, No. 85-1134 (D.C. Cir. Apr. 1, 1987), *remanding* Warner Amex Cable Communications, Inc. v. Southwestern Electric Power Co. (PA-82-017), FCC 84-655 (released Jan. 7, 1985).

12. Southwestern Electric Power Co. v. FCC, No. 85-1570 (D.C. Cir. Apr. 1, 1987), *remanding* Texas Cablevision Co. v. Southwestern Electric Power Co. (PA-84-007), FCC 85-476 (released Aug. 22, 1985).

13. Texas Power and Light Co. v. FCC, 784 F.2d 1265 (5th Cir. 1986), *remanding* Teleprompter Corp. v. Texas Power and Light Co. (PA-84-617) (released Dec. 13, 1984).

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